

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
DALE W. MUSTAS,	:	LS0410071REB
RESPONDENT.	:	

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Division of Enforcement Case No. 01REB353

The State of Wisconsin, Real Estate Board, 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, Real Estate Board.

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 23rd day of June, 2005.

Richard Kollmansberger  
Board Member  
Real Estate Board

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

PROPOSED DECISION  
Case No. LS0410071REB

**PARTIES**

The parties in this matter under § 227.44, Stats., and for purposes of review under § 227.53, Stats., are:

Dale W. Mustas  
670 Florence Drive  
Elm Grove, WI 53122

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

This proceeding was commenced by the filing of a Notice of Hearing and Complaint on October 7, 2004. The Respondent's Answer was filed on November 24, 2004. The hearing was held on December 9, 2004. Attorney Angela L. Arrington appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Atty. William J. Pulkinen appeared on behalf of the respondent, Dale W. Mustas. The hearing transcript was filed on December 27, 2004.

Based upon the record herein, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

**FINDINGS OF FACT**

1. Dale W. Mustas ("Respondent"), date of birth 02/09/58, is licensed in the State of Wisconsin as a real estate broker having license #90-42410. This license was first granted to respondent on 06/10/87.
2. Respondent's last reported address on file with the Department of Regulation and Licensing is 670 Florence Drive, Elm Grove, WI 53122.
3. At all times relevant to the allegations stated in the Complaint filed in this matter, 2004, Respondent was the owner and a real estate broker for Mustas Real Estate Services, license #90-42410, located at 11063 West Bluemound Road, Wauwatosa, WI 53226. Mustas Real Estate Services is currently located at 670 Florence Drive, Elm Grove, WI 53122. This license was first granted to the company on 07/01/83 and was valid through 12/31/04.
4. On or about February 23, 1995, the Real Estate Board revoked Respondent's real estate broker's license for failing to properly account for earnest money received from one of his clients; failing to treat parties to a transaction fairly, and making substantial misrepresentations to the parties involved. Respondent's license was revoked after a hearing on the merits of the case.
5. The records of the Department of Regulation and Licensing indicate that Respondent's license to practice as a real estate broker remained in revoked status at least from February 23, 1995 to July 17, 2002.
6. On or about September 10, 1998, Respondent endorsed check number 423637 in the amount of \$1,134.80. The check was to be paid as a commission to Mustas Real Estate Services on the Option Closing Statement prepared for Shorewest Realtors for a closing on 12000 West Bluemound Road in Wauwatosa, Wisconsin.
7. On or about January 28, 1999, Respondent endorsed check number 83672 in the amount of \$3,710.00. The check was to be paid as a commission to Mustas Real Estate Services on the Closing Statement prepared for Realty Executives for a closing on 670 Florence Drive, Elm Grove, Wisconsin. Respondent was one of the buyers in this transaction.

8. On or about December 15, 1999, Respondent endorsed check number 027207 in the amount of \$2,342.00. The check was to be paid as a commission to Mustas Real Estate Services on the Closing Statement prepared for Realty Executives for a closing on 1272 N. 85th Street, Wauwatosa, Wisconsin.

9. On or about November 10, 2000, Respondent endorsed check number 1-9124 in the amount of \$2,376.00. The check was to be paid as a commission to Mustas Real Estate Services on the Closing Statement prepared by Title West, Inc., for a closing on 220 Summit Avenue, Oconomowoc, Wisconsin. One of the buyers in this transaction was a family member of the Respondent.

10. On or about March 28, 2001, Respondent endorsed check number 2460 in the amount of \$2,618.86. The check was to be paid as a commission to Mustas Real Estate Services on the Closing Statement prepared by Attorney Daniel J. Raymonds for a closing on 4867 W. Maple Leaf #2, Greenfield, Wisconsin.

11. On or about June 8, 2001, Respondent endorsed check number 3477 in the amount of \$2,778.08. The check was to be paid as a commission to Mustas Real Estate Services on the Closing Statement prepared by Attorney Daniel J. Raymonds for a closing on 4907 W. Maple Leaf #2, Greenfield, Wisconsin.

12. Respondent accepted a total amount of \$14,959.74 in commission checks for the transactions described in Findings of Fact 6-11 herein.

13. Respondent did not hold a real estate broker's license at any time during which he accepted the commissions described in Findings of Fact 6-11 herein.

14. In June or July of 2002, Respondent filed an Application for New Salesperson or Broker License with the Department of Regulation and Licensing. Respondent was applying for a real estate broker's license.

15. In completing the Application for New Salesperson or Broker License, Respondent answered "NO" to question "C" on the application:

C. Has any licensing or other credentialing agency ever taken any disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation or revocation?  
If YES, attach a sheet providing details about the action, including the name of the agency and status of the action.

16. Respondent did not disclose on his Application for New Salesperson or Broker License the fact that his real estate broker's license had been revoked by the Wisconsin Real Estate Board on February 23, 1995.

17. In July, 2002, Respondent's Application for New Salesperson or Broker License was approved by the Department and he was granted a real estate broker's license. The license was valid through 12/31/04.

18. On April 21, 2004, Respondent was interviewed at the Department by the investigator and prosecuting attorney assigned to this case. Respondent was questioned about practicing real estate with a revoked license and about the commissions that he received. Respondent admitted to knowingly practicing real estate with a revoked license and accepting commissions. Respondent was also questioned about the false information that he provided on his application for a real estate broker's license. Respondent admitted to providing false information on his real estate broker's license application.

### **CONCLUSIONS OF LAW**

1. The Real Estate Board has jurisdiction in this matter pursuant to s. 452.14 (3) Wis. Stats.
2. Respondent's conduct, as described in Findings of Fact 3-13 and 18 herein, constitutes a violation of s. 452.03, Wis. Stats.
3. Respondent's conduct, as described in Findings of Fact 14-18 herein, constitutes a violation of s. 452.14 (3) (a), Wis. Stats.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the license (#90-42410) of DALE W. MUSTAS, to practice as a real estate broker, be and hereby is Revoked.

**IT IS FURTHER ORDERED** that pursuant to s. 440.22, Wis. Stats., the cost of this proceeding shall be assessed

against respondent, and shall be payable to the Department of Regulation and Licensing.

This order is effective on the date on which it is signed on behalf of the Real Estate Board.

### **OPINION**

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated ss. 452.03 and 452.14 (3) (a), Wis. Stats. The evidence presented establishes that the violations occurred.

## **I. Applicable Law**

**452.01 Definitions.** In this chapter:

(2) "Broker" means any person not excluded by sub. (3), who does any of the following:

(a) For another, and for commission, money or other thing of value, negotiates or offers or attempts to negotiate a sale, exchange, purchase or rental of an interest or estate in real estate.

**452.03 Brokers and salespersons licensed.** No person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license. Licenses shall be granted only to persons who are competent to transact such businesses in a manner which safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the department.

**452.14 Investigation and discipline of licensees.**

(3) Disciplinary proceedings shall be conducted by the board according to rules adopted under s. 440.03 (1). The board may revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has:

(a) Made a material misstatement in the application for a license or registration, or in any information furnished to the board or department;

(4m) In addition to or in lieu of a reprimand, the issuance of a private letter of warning or a revocation, limitation or suspension of a license or certificate of registration under sub. (3), the board may do any of the following:

(a) Assess against a person who is licensed or registered under this chapter a forfeiture of not more than \$1,000 for each violation enumerated under sub. (3).

(b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or registration or for renewal of a license or certificate under this chapter, as a condition of continued licensure or registration or reinstatement of a license or certificate.

## **II. Evidence Presented**

The Division of Enforcement alleges in its Complaint that by engaging in the conduct described therein, respondent violated ss. 452.03 and 452.14 (3) (a), Wis. Stats. The evidence presented establishes that the violations occurred.

### **(A) Unlicensed Practice**

The Division of Enforcement alleges in its Complaint that Mr. Mustas engaged in the practice of real estate without a license, in violation of s. 452.03 Wis. Stats.

Section 452.03, Stats., states that no person may engage in or follow the business or occupation of, or advertise or hold himself or herself out as, or act temporarily or otherwise as a broker or salesperson without a license.

On June 10, 1987, the Department of Regulation and Licensing granted a license to Mr. Mustas to practice as a real estate broker.

On or about February 23, 1995, the Real Estate Board revoked Mr. Mustas' real estate broker's license for failing to properly account for earnest money received from one of his clients; failing to treat parties to a transaction fairly, and making substantial misrepresentations to the parties involved. Mr. Mustas' license was revoked after a hearing on the merits of the case.

The Division of Enforcement alleges in paragraphs 6-12 of its Complaint that on six different occasions, September 10, 1998, December 15, 1999, January 28, 1999, November 10, 2000, March 28, 2001, and June 8, 2001, Mr. Mustas accepted a total of \$14,959.74, in commission checks for services that he provided while acting as a real estate broker. During that time period, between September 10, 1998 and June 8, 2001, Mr. Mustas did not hold a real estate broker's license.

Mr. Mustas admitted in his Answer to the Complaint, as well as in the stipulation of facts that he agreed to at the hearing, that he engaged in the practice of real estate without a license on the six occasions referred to in the Division of Enforcement's Complaint. In addition, on April 21, 2004, Mr. Mustas was interviewed at the Department by the investigator and prosecuting attorney assigned to this case. During the interview, Mr. Mustas was questioned about practicing real estate with a revoked license and about the commissions that he had received. Mr. Mustas admitted to knowingly practicing real estate with a revoked license and accepting commissions.

Finally, Mr. Mustas testified at the hearing held in this matter regarding the reasons he practiced as a real estate broker without a license [Tr. p. 16-18]:

Q Mr. Mustas, you admitted that you were involved in six transactions from September of '98 through June of 2001?

A Yes.

Q Can you explain for the Judge your rationale for your involvement in those six transactions knowing your license had been revoked?

A Well, I wasn't out soliciting that business. It was from my future wife's family that asked me to help them. It was her sister, her cousin and aunts and uncles, and I just did, and I felt, you know, bad about that, and I wanted to be legitimate, and that's why I went to get my license back, and I actually started a few years earlier, take the class work and the exams but never filing the application.

Q Now, your injuries had something to do with that; isn't that correct?

A With not taking the exam or filing the application?

- Q Take the steps necessary to reinstate, to make application.
- A Well, yes. I mean, I hired an attorney to find out what I had to do to get it back, and I took the steps to get it back. These things just kind of happened before that and during that, and I wanted to be legit. I love this business, and I want to continue to be in it, and I never tried to do the wrong things.
- Q Why didn't you just tell your relatives on each one of these six transactions that you did not have a license and you couldn't help them?
- A Well, you know, I don't know. You know, in hindsight, I should have. I wouldn't be here today.
- Q Was it the fact that you were simply trying to avoid embarrassment?
- Q Were you embarrassed?
- A I was embarrassed to tell them that I wasn't licensed, that this whole thing mushroomed out of control.
- Q Did you understand the error in your thinking?
- A Yes.
- Q Do you know that, at this point, that you were clearly incorrect in your actions?
- A Yes.
- Q In any of those transactions that you were involved in, were there any complaints against you as far as your professionalism or competency in delivering the services?
- A No.

**(B) Misrepresentation on License Application**

The Division of Enforcement alleges in its Complaint that by failing to disclose on his July, 2002 license application that he had been disciplined by the Real Estate Board in 1995, Mr. Mustas made a material misrepresentation on his license application, in violation of s. 452.14 (3) (a), Stats. The evidence presented establishes that the violation occurred.

Subsection 452.14 (3) (a), Stats., states, in part, that the Real Estate Board may impose discipline on a licensee if it finds that the licensee has made a material misstatement in the application for a license or registration, or in any information furnished to the board or department.

As noted previously, the Department of Regulation and Licensing granted a license to Mr. Mustas to practice as a real estate broker on June 10, 1987. On or about February 23, 1995, the Real Estate Board revoked Mr. Mustas' real estate broker's license for failing to properly account for earnest money received from one of his clients; failing to treat parties to the transaction fairly, and making substantial misrepresentations to the parties involved.

In June or July of 2002, Mr. Mustas filed another "Application for New Salesperson or Broker License" with the Department of Regulation and Licensing. In completing the Application, Mr. Mustas answered "NO" to the following question on the application form:

C. Has any licensing or other credentialing agency ever taken any disciplinary action against you, including but not limited to, any warning, reprimand, suspension, probation, limitation or revocation?  
If YES, attach a sheet providing details about the action, including the name of the agency and status of the action.

Mr. Mustas admitted in his Answer to the Complaint, as well as in the stipulation of facts that he agreed to at the hearing, that he did not respond truthfully to question "C" on the application, and that he failed to attach a sheet providing details about his license revocation on February 23, 1995. In addition, on April 21, 2004, Mr. Mustas was interviewed at the Department by the investigator and prosecuting attorney assigned to this case. During the interview, Mr. Mustas was questioned about the false information that he provided on his application for a real estate broker's license. During the interview, Mr. Mustas admitted to providing false information on his real estate broker's license application.

Finally, Mr. Mustas testified at the hearing held in this matter regarding the reasons he did not disclose his prior discipline as follows [Tr. p. 18-20]:

Q When you made application in June of 2002 for your license, you filled out what's marked as State's Exhibit No. 7; correct?

Q Is that correct?  
A Yes.

Q You had prior conversations with personnel at the Department of Regulation prior to filling out the application?

A Yes.

Q What was the gist of your conversations that you had with the personnel?

A Well, they mentioned that I could reapply if I followed the steps of, you know, the stipulation I guess in order to get my license back. I had an attorney involved at the time back in probably '96 or 7, and he told me what to do, and I tried to go out and do it.

Q I'm going to refer you to page 2. It asks have you ever been revoked, and I believe you did mark no; is that correct?

Q Second page of four. It's item C. Do you see that question?  
A Yes.



Q Did you see the box where it's checked no?

A Right.

Q You knew you had been revoked prior to that, hadn't you?

A Yes.

Q Can you explain to the Court why you did what you did?

A Well, I mean, they told me to reapply so I know they knew what happened before, and I don't know. I mean, if that's the reason that I'm going through all this is because I checked the wrong box, I mean, I can't believe that that didn't pop up before I left the building here when I turned this in that I was revoked and that I mismarked that.

Q You had conversations prior to filling this out with the personnel of the Department of Regulation?

A Yes, more than a few times.

Q You personally understood that they knew you were revoked?

A Well, I know they did because that's what we were talking about.

Q Do you understand, at this point in time, that was wrong to check?

A Yes.

Q No?

A Yes. And just I don't understand that it took three years for them to find this. They knew. I mean, they knew who we are. Everybody up there knows the people that had their hands slapped.

### **III. Discipline**

Having found that Mr. Mustas violated laws relating to practice as a real estate broker, a determination must be made regarding whether discipline should be imposed, and if so, what discipline is appropriate.

The Real Estate Board is authorized under s. 452.14 (3), Stats., to revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the licensee or registrant has engaged in the type of conduct prohibited by the statutes.

The purposes of discipline by occupational licensing boards are to protect the public, deter other licensees from engaging in similar misconduct and to promote the rehabilitation of the licensee. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not a proper consideration. State v. MacIntyre, 41 Wis. 2d 481 (1969).

The Division of Enforcement recommends that Mr. Mustas' license as a real estate broker be revoked for a period not

less than five years, and that he be ordered to pay the costs of this proceeding. Mr. Mustas recommends that he be granted a limited license with certain conditions that protect the public. He also expressed his willingness to complete certain education course work; to pay \$6,000.00 in forfeitures, and to pay the cost of this proceeding. *Tr. p. 42-52.*

Based upon the evidence presented, the Administrative Law Judge recommends that Mr. Mustas' license as a real estate broker be revoked, and that he be ordered to pay the costs of the proceeding. This measure is designed primarily to assure protection of the public and to deter other licensees from engaging in similar misconduct.

In my opinion, Mr. Mustas has shown that he is dishonest and incapable of practicing in a manner that safeguards the interest of the public. He was dishonest with the individuals and entities involved in the six real estate transactions that he participated in as a real estate broker while his license was revoked. Those individuals and entities, which included the clients, co-brokers and lenders, were led to believe that Mr. Mustas was duly licensed and operating properly under the law. Had he disclosed to any of those individuals or entities that he did not have a license as a real estate broker, it is unlikely that they would have had any dealings with him. He was also dishonest at the hearing when he testified that he participated in the six transactions because he wanted to help his future wife's family. In total, he received almost \$15,000.00 in commission for the six transactions. Had he declined the commissions, his statement would have been more believable. Even if it concluded that he participated in the transactions solely for the purpose of assisting relatives and friends, it would not constitute a valid defense to the charge of unlicensed practice.

In reference to the application that he submitted for his second real estate broker's license, Mr. Mustas was dishonest when he represented on the application that he had not been disciplined. Such misrepresentation deprived the Department of the opportunity to conduct an assessment at that time to determine whether he was capable of practicing in a manner that safeguards the interest of the public. Finally, Mr. Mustas was less than honest when he testified at the hearing regarding the application. He initially testified that the Department staff told him to reapply "so they knew what happened before". Then, he said that the reason that he was "going through all this" is because he "checked the wrong box" and that he "mismarked" the box. So, did he check the "No" box on the application because of his reliance on the Department's staff or did he check the "No" box in error?

#### **IV. Costs of the Proceeding**

Section 440.22(2), Stats., provides in relevant part as follows:

In any disciplinary proceeding against a holder of a credential in which the department or an examining board, affiliated credentialing board or board in the department orders suspension, limitation or revocation of the credential or reprimands the holder, the department, examining board, affiliated credentialing board or board may, in addition to imposing discipline, assess all or part of the costs of the proceeding against the holder. Costs assessed under this subsection are payable to the department.

The presence of the word "may" in the statute is a clear indication that the decision whether to assess the costs of this disciplinary proceeding against the respondent is a discretionary decision on the part of the Board, and that the Board's discretion extends to the decision whether to assess the full costs or only a portion of the costs. The Administrative Law Judge's recommendation that the full costs of the proceeding be assessed is based primarily on fairness to other members of the profession.

The Department of Regulation and Licensing is a "program revenue" agency, which means that the costs of its

operations are funded by the revenue received from its licensees. Moreover, licensing fees are calculated based upon costs attributable to the regulation of each of the licensed professions, and are proportionate to those costs. This budget structure means that the costs of prosecuting cases for a particular licensed profession will be borne by the licensed members of that profession. It is fundamentally unfair to impose the costs of prosecuting a few members of the profession on the vast majority of the licensees who have not engaged in misconduct. Rather, to the extent that misconduct by a licensee is found to have occurred following a full evidentiary hearing, that licensee should bear the costs of the proceeding.

This approach to the imposition of costs is supported by the practice of the Wisconsin Supreme Court, which is granted similar discretionary authority by SCR 22.24 to impose costs in attorney disciplinary hearings. The Court acknowledges the logic of imposing the cost of discipline on the offender rather than on the profession as a whole, and routinely imposes costs on disciplined respondents unless exceptional circumstances exist. In the Matter of Disciplinary Proceedings against M. Joanne Wolf, 165 Wis. 2d 1, 12, 476 N.W. 2d 878 (1991); In the Matter of Disciplinary Proceedings against Willis B. Swartwout, III, 116 Wis. 2d 380, 385, 342 N.W. 2d 406 (1984).

Based upon the record herein, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Dated at Madison, Wisconsin this 6th day of April 2005.

Respectfully submitted,

Ruby Jefferson-Moore  
Administrative Law Judge