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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
AGAINST	:	ORDER OF
	:	SUMMARY SUSPENSION
THERESA A. WINGER-PROSSER,	:	DOE Case Nos. 04 REB 295 & 05 REB 042
RESPONDENT.	:	

This matter came before the Real Estate Board as scheduled and noticed in the Notice and Petition for Summary Suspension filed on June 14, 2005. Attorney John Nicholas Schweitzer appeared; there was no appearance by the respondent. The allegations in the Petition, sworn to by the Petitioner as true upon information and belief, were used as the basis for the decision to issue this order as well as the sworn testimony of Candace O. Bloedow, investigator for the Division of Enforcement.

FINDINGS OF FACT

1. The Respondent is Theresa A. Winger-Prosser. Ms. Winger-Prosser's last-known address on file with the Department of Regulation and Licensing is P.O. Box 160, Hazelhurst, WI 54531
At all times relevant to these facts Ms. Winger-Prosser held real estate broker's license number 90-51378 issued by the Wisconsin Department of Regulation and Licensing.
2. An informal complaint was received by the department against Ms. Winger-Prosser on March 16, 2005 and designated 05 REB 042. The complaint alleged that Ms. Winger-Prosser had removed money from her real estate trust account for other than legitimate purposes.
3. In the course of investigating complaint 05 REB 042, a subpoena was issued to Associated Bank in Madison, Wisconsin for bank records of the Winger Realty trust account from January 1, 2005 to April 30, 2005. These records were received by the Department on May 26, 2005.
4. As an initial minor matter, the bank records showed, first, that Ms. Winger-Prosser had opened a real estate trust account at some time prior to January 1, 2005, as it was active with a small balance on that date. Ms. Winger-Prosser did not file within 10 days of its opening an authorization for this Department to examine and audit her trust account records. This is a violation of section 452.13 (2) (b) 3 of the Wisconsin Statutes and section RL 18.036 of the Wisconsin Administrative Code, which says:

No later than 10 days after opening a real estate trust account a broker shall furnish the department authorization for the department to examine and audit all of the broker's real estate trust account records and authorization for the department of administration to examine all of the broker's interest-bearing common trust accounts maintained for client funds. The authorization shall be provided on a form, as required in s. RL 18.037.
5. The bank records show the deposit on 1-12-05 of a check for \$95,000 which was dated 12-17-04 on the account of Coldwell Banker, with the notation "Refund Earnest Money for Sara Hough". The check was endorsed by "Theresa A. Winger, Winger Realty Trust Acct." This is a violation of section RL 18.031 (1) of the Wisconsin Administrative Code, which says:

A broker shall deposit all real estate trust funds received by the broker or broker's salespersons or time-share salespersons in a real estate trust account within 48 hours of receipt of the trust funds. If funds are received on a day prior to a holiday or other day when the depository institution is closed, the broker shall deposit the funds within the next 2 business days of the depository institution. If a broker receives funds which cannot be deposited by the broker, the broker shall, no later than one business day after receipt, either: (a) Forward the funds to the payee, if someone other than the broker; or (b) Return the funds to the payor.

6. The bank records show the following transactions following the January 12, 2005 deposit of \$95,000 in trust funds for Sara Hough:

- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on January 12, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on January 18, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on January 19, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on January 26, 2005
- a check written for \$30,000 to Theresa A. Winger signed by Ms. Winger-Prosper and cashed on January 29, 2005
- a check written for \$24,700 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on January 31, 2005
- a deposit of \$10,000 from Cora Salvine and Richard Hein of Scottsbluff, Nebraska deposited on April 21, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosper and cashed on April 21, 2005

A.A.O. Inc. is a company owned by Ms. Winger-Prosper, and none of the checks written from the Trust Account to A.A.O. Inc. or to Theresa A. Winger appears to be a disbursement of trust funds to a legitimate payee.

7. On January 26, 2005, Ms. Winger-Prosper wrote a check for \$125,000 to Sarah Hough from the Winger Trust Account. Ms. Hough's attorney called the bank to see if it could be cashed and was told that there were insufficient funds to pay it. The bank records show that at no time between 1-1-05 and 4-30-05 were there sufficient funds to pay the check.

8. Copies of bank records prior to January 1, 2005 were obtained from law enforcement in Minocqua, which is also investigating this matter. Those records show that a check for earnest money in the amount of \$125,000 was written by Sarah Hough to the Winger Realty Trust Account and deposited in that account on November 30, 2004. On the same day, Ms. Winger-Prosper forwarded a check for \$95,000 to the Coldwell Banker trust account. (This was the amount returned to Ms. Winger-Prosper on 12-17-04 when the sale fell through.) Also on November 30, 2004 Ms. Winger-Prosper wrote a check from her trust account for \$29,500 to A.A.O. Inc.

9. A request for information regarding case number 05 REB 042 was sent to Ms. Winger-Prosper on April 27, 2005 with a deadline of May 11, 2005 for her response, but as of the date of this Petition, she has not responded. In a handwritten statement dated January 28, 2005, obtained by this Department from law enforcement in Minocqua, Ms. Winger-Prosper wrote "Daniel Achotin took \$157,000 from my trust account. ... Daniel ... used my stamp with my signature and found my check book in my desk." A non-expert examination of the signatures on the checks discloses variations in the signatures inconsistent with their being stamped, but even if true, this explanation would not address the 11-30-04 check or the 4-21-05 check, which were well before and after the time period in which the person allegedly stole and used the stamp. Ms. Winger-Prosper has offered no reasonable or legitimate explanation for these withdrawals of funds held in trust for Sara Hough and, apparently, for Cora Salvine and Richard Hein of Scottsbluff, Nebraska.

10. Ms. Winger-Prosper's actions in removing money from her trust account constitute violations of section RL 18.09 of the Wisconsin Administrative Code and section 452.13 of the Wisconsin Statutes.

11. An earlier informal complaint was received by the Department against Ms. Winger-Prosper on December 18, 2004 and designated 04 REB 295. The complaint alleged that Ms. Winger-Prosper went around a listing broker to negotiate a sale directly with a property owner.

12. In the course of investigating complaint 04 REB 295, the Department has obtained documents that show that Ms. Winger-Prosper (1) negotiated directly with a party who had listed his property for sale with another broker, and (2) advised that party to sign a second contract through her that negated an existing, valid, contract. Specifically:

(a) Daniel Bobbe signed a Listing Contract with Coldwell Banker Mulleady Inc., Realtors, for the sale of his property in Minocqua, Wisconsin. The term of the listing contract was originally from February 11, 2003 to February 11, 2004, and it was extended by amendments to December 1, 2004. Ms. Winger-Prosper was aware that the property was listed with the Coldwell Banker office because on August 24, 2004 she presented an Offer to Purchase on the property to the listing broker from her potential buyers, Larry and Mary Swanson.

(b) Ms. Winger-Prosper was informed by Coldwell Banker that the Swansons' Offer to Purchase would be treated as a secondary offer since another offer had already been accepted. Ms. Winger-Prosper would receive a commission if Mr. Bobbe sold his property to the Swansons, but not if he sold it to the primary buyers.

(c) The primary offer included a financing contingency and the receipt of the secondary offer required the primary

buyers to waive the financing contingency within 72 hours. The primary buyers did waive the financing contingency within 72 hours. Nevertheless, Ms. Winger-Prosser, negotiating directly with Mr. Bobbe, convinced him to sign a contract to sell his property to the Swansons.

(d) Ms. Winger-Prosser scheduled a closing on the sale to the Swansons, and the day before the closing, the buyers who held the valid contract signed first by Mr. Bobbe, found out about the closing and filed an Affidavit of Interest in the property, thereby clouding the title. A civil suit has also been filed in the matter.

(e) Ms. Winger-Prosser's actions constitute violations of the following statutes and administrative code sections:

- sec. RL 24.13 (5), Wis. Admin. Code (going around a listing broker),
- sec. RL 24.03 (2), Wis. Admin. Code (incompetence),
- sec. 452.14 (3), Wis. Stats. (incompetence),
- sec. 452.14 (3) (b), Wis. Stats. (misrepresentation),
- sec. RL 24.03 (2) (b), Wis. Admin. Code (fraud),
- sec. 452.14 (3) (k), Wis. Stats. (fraud), and
- sec. 452.133 (1), Wis. Stats. (duty to all parties).

13. A request for information regarding case number 04 REB 295 was sent to Ms. Winger-Prosser on January 28, 2005, and she responded on March 22, 2005 with copies of relevant documents. The documents only confirm the allegations. A request for further information was sent on April 27, 2005 with a deadline of May 11, 2005 for her response, but as of the date of this Petition, she has not responded.

14. From 4/30/98 to 12/31/04 Ms. Winger-Prosser held real estate salesperson's license number 94-48600. She initially registered as Theresa A. Prosser and later changed her name to Theresa A. Winger. The only name associated with her current real estate broker's license is Theresa A. Winger-Prosser, but she continues to use the name Theresa A. Winger on her real estate business cards without registering it as a trade name. This is a minor technical violation of section RL 24.04 (2) (a) of the Wisconsin Administrative Code, which says:

Except for advertisements for the rental of real estate owned by the broker, a broker shall in all advertising disclose the broker's name exactly as printed on the broker's license or disclose a trade name previously filed with the department, as required by s. RL 23.03, and in either case clearly indicate that the broker is a business concern and not a private party.

15. Ms. Winger failed to renew her broker's license by December 31, 2004. It went into expired status on January 11, 2005 and was not renewed until April 19, 2005. Ms. Winger continued to practice as a real estate broker without a valid license in the period during which her license was expired. This is a violation of sections 452.03 and 452.17 (1) of the Wisconsin Statutes.

16. Ms. Winger-Prosser has engaged in and is likely to engage in conduct such that the public health, safety or welfare imperatively requires emergency suspension of Ms. Winger-Prosser's real estate broker's license.

17. Ms. Winger-Prosser was informed of the Notice and Petition for Summary Suspension by first-class mailing on June 14, 2005 to the Respondent's last-known address as indicated in the Department's records, as required by Wis. Admin. Code, sec. RL 6.05. Ms. Winger-Prosser was also personally served with a copy of the Notice and Petition for Summary Suspension on June 22, 2005.

CONCLUSION OF LAW

The legal requirements for the summary suspension of the Respondent's Real Estate Broker's License have been fulfilled pursuant to Wis. Adm. Code, chapter RL 6.

ORDER

NOW, THEREFORE, IT IS ORDERED that the Real Estate Broker's License issued to Theresa A. Winger-Prosser is SUSPENDED as of the date of this order, and shall remain suspended until a final decision and order is issued in this matter,

or until further order. Respondent shall surrender her credentials immediately to the following address:

Department of Regulation and Licensing
Attn: Pamela Majewski, Paralegal
P.O. Box 8935
Madison, WI 53708

IT IS FURTHER ORDERED that Ms. Winger-Prosper may request a hearing to show cause why this suspension order should not be continued, and she may file such request with the Department of Regulation and Licensing at Box 8935, Madison, WI 53708-8935. A hearing on such request shall be scheduled within 20 days of the date the Department receives such request, unless Ms. Winger-Prosper agrees to a later date.

Signed and dated June 23, 2005,

FOR THE REAL ESTATE BOARD:

Ricahard Kellmansberger, Chair

To: Theresa A. Winger-Prosser
P.O. Box 160
Hazelhurst, WI 54531

NOTICE OF RIGHT TO SHOW CAUSE

PLEASE TAKE NOTICE that you have the right to request a hearing following the issuance of this order to show cause why the order should not be continued until the effective date of a final decision and order. A request to show cause must be filed with the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708. If a hearing to show cause is requested, the hearing shall be scheduled before an Administrative Law Judge on a date within twenty (20) days of the date of receipt by the Department of the request for hearing, unless you request or agree to a later time.

If a hearing to show cause is held, you may testify as well as the petitioner. You and the petitioner may call witnesses and examine and cross-examine them. The petitioner will have the burden to show why the order should be continued. At the conclusion of the hearing, the Administrative Law Judge will make findings of fact and conclusions of law and recommend a final decision and order to the Real Estate Board. If it is determined that the summary suspension should not be continued, your license will be restored to you.

June 23, 2005