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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF :
DISCIPLINARY PROCEEDINGS AGAINST : **FINAL DECISION AND ORDER**
AGAINST :
THERESA A. WINGER-PROSSER, : **LS-0507061-REB**
RESPONDENT. :

DOE Case Nos. 04 REB 295 & 05 REB 042

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

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

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
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 of this matter, subject to the approval of the Real Estate Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

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. Bank records obtained by the Department show that Ms. Winger-Prosser opened a real estate trust account at some time prior to 1-1-05, 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.
4. The bank 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 11-30-04. On the same day, Ms. Winger-Prosser forwarded a check for \$95,000 to the Coldwell Banker trust account. Also on 11-30-04, Ms. Winger-Prosser wrote a check from her trust account for \$29,500 to A.A.O. Inc.

5. The real estate sale did not proceed to closing and on 12-17-04 Coldwell Banker returned a check for \$95,000 to Ms. Winger-Prosser, with the notation "Refund Earnest Money for Sara Hough."

6. The bank records show the deposit on 1-12-05 of the \$95,000 Coldwell Banker check. The check was endorsed by "Theresa A. Winger, Winger Realty Trust Acct."

7. The bank records show the following transactions following the 1-12-05 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-Prosser and cashed on January 12, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosser and cashed on January 18, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosser and cashed on January 19, 2005
- a check written for \$10,000 to A.A.O. Inc. signed by Ms. Winger-Prosser and cashed on January 26, 2005
- a check written for \$30,000 to Theresa A. Winger signed by Ms. Winger-Prosser and cashed on January 29, 2005
- a check written for \$24,700 to A.A.O. Inc. signed by Ms. Winger-Prosser 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-Prosser and cashed on April 21, 2005

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

9. On 1-26-05, Ms. Winger-Prosser 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.

10. A request for information regarding case number 05 REB 042 was sent to Ms. Winger-Prosser on 4-27-05, with a deadline of 5-11-05, for her response, but she did not respond.

11. In a handwritten statement dated 1-28-05, obtained by this Department from law enforcement in Minocqua, Ms. Winger-Prosser 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.

12. Ms. Winger-Prosser has offered no reasonable or legitimate explanation for the withdrawal of funds held in trust for Sara Hough, or for the withdrawal of funds held in trust for Cora Salvine and Richard Hein of Scottsbluff, Nebraska.

13. Ms. Winger-Prosser did not maintain either a cash journal or a ledger for her trust account.

14. An earlier informal complaint was received by the Department against Ms. Winger-Prosser on 12-18-04 and designated 04 REB 295. The complaint alleged that Ms. Winger-Prosser went around a listing broker to negotiate a sale directly with a property owner.

15. In the course of investigating complaint 04 REB 295, the Department obtained documents that show that Ms. Winger-Prosser (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-Prosser 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 aware that the Swansons' Offer to Purchase was a secondary offer since another offer had already been accepted.

(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, but Ms. Winger-Prosper miscalculated or misunderstood the time period and she believed the Swanson's Offer to Purchase had become the primary offer. Ms. Winger-Prosper began negotiating directly with Mr. Bobbe, and she prepared at least four Amendments to the Offer to Purchase which she presented only to Mr. Bobbe and the Swansons, not going through the listing broker. The listing broker was unaware of these negotiations.

(d) Ms. Winger-Prosper 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 was filed in the matter.

16. A request for information regarding case number 04 REB 295 was sent to Ms. Winger-Prosper on 1-28-05, and she responded on 3-22-05 with copies of relevant documents. The documents only confirm the allegations. A request for further information was sent on 4-27-05 with a deadline of 5-11-05 for her response, but she did not respond.

17. From 4-30-98 to 12-31-04 Ms. Winger-Prosper 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-Prosper, but she continues to use the name Theresa A. Winger on her real estate business cards without registering it as a trade name.

18. Ms. Winger failed to renew her broker's license by 12-31-04 and although she made an attempt to renew it on 2-18-05, she discovered a tax lien that had to be resolved, and it was not renewed until 4-19-05. Ms. Winger continued to practice as a real estate broker without a valid license in the period during which her license was expired.

19. Ms. Winger-Prosper has offered voluntarily to surrender her real estate broker's license.

CONCLUSIONS OF LAW

A. The Wisconsin Real Estate Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §452.14, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

B. Ms. Winger-Prosper's actions and inactions in paragraph 3 of the Findings of Fact above constitute 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.

C. Ms. Winger-Prosper's actions and inactions in paragraph 6 of the Findings of Fact above constitute 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.

D. Ms. Winger-Prosper's actions in removing money from her trust account without a legitimate purpose constitute violations of section RL 18.09 of the Wisconsin Administrative Code and section 452.13 of the Wisconsin Statutes.

E. Ms. Winger-Prosser's failure to maintain a cash journal and a ledger for her trust account constitute violations of section RL 18.13 (2) and (3) of the Wisconsin Administrative Code.

F. Ms. Winger-Prosser's actions and inactions in paragraph 15 of the Findings of Fact above 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. 452.133 (1), Wis. Stats. (duty to all parties).

G. Ms. Winger-Prosser's actions and inactions in paragraph 17 of the Findings of Fact above constitute a 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.

H. Ms. Winger-Prosser's actions and inactions in paragraph 18 of the Findings of Fact above constitute a violation of sections 452.03 and 452.17 (1) of the Wisconsin Statutes.

I. By the conduct described above, Ms. Winger-Prosser is subject to disciplinary action against her license, pursuant to Wis. Stat. sec. 452.14 (3).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

I. The VOLUNTARY SURRENDER of the license issued to Theresa A. Winger-Prosser to practice real estate in the State of Wisconsin is hereby ACCEPTED, effective on the date of this order.

II. Ms. Winger-Prosser shall, within 60 days from the date of this order, pay costs in case 04 REB 295 of \$717.55, and in case 05 REB 042 of \$2,643.72, a total of \$3,361.27. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

FOR THE REAL ESTATE BOARD

By: Richard Kollmansberger
A Member of the Board

October 27, 2005
Date