

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF APPLICATION FOR :
REAL ESTATE SALESPERSON'S LICENSE FOR : FINAL DECISION
: AND ORDER
ROGER A MACKEBEN :
APPLICANT :

Based upon the Stipulation and information of record herein, the Department adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Roger A. Mackeben (Applicant) has filed an application for a license to practice as an auctioneer in Wisconsin.
2. Information received in the application process reflects that:
 - a. On or about August 24, 2005 Applicant was convicted of violation of AZ. Stat. §§ 13-3407(A)(1), 13-3407(B)(1), 13-701, 13-702 and 13-801 [possession of dangerous drugs]

CONCLUSIONS OF LAW

1. The Wisconsin Department of Regulation and Licensing has jurisdiction over this matter pursuant to Wis. Stat. § 480.08(2) and authority to enter into a stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).
2. The facts and circumstances of the convictions referenced above are substantially relate to the practice of an auctioneer, and Applicant by that conduct is subject to disciplinary action against his license pursuant to Wis. Stat. § 480.24.

ORDER

NOW, THEREFORE, IT IS ORDERED that Roger A. Mackeben is GRANTED an AUCTIONEER'S LICENSE subject to the following LIMITATIONS, TERMS AND CONDITIONS.

Sobriety

1. Applicant shall abstain from all personal use of alcohol and controlled substances as defined in § 961.01(4), Stats., except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant shall at the time the controlled substance is ordered immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Applicant's treatment with, and provide copies of treatment records to, Treatment Provider and the Department or Department Monitor.
2. Applicant shall refrain from the consumption of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Applicant's treatment and rehabilitation.
3. The Department reserves the right to require participation by Applicant in a drug treatment program at a treatment facility (Treatment Provider) acceptable to the Department, should the Department Monitor in its discretion believe treatment is warranted on the basis of a report(s) received. [\[1\]](#)

Releases

4. Applicant shall provide and keep on file with his Probation Agent, Treatment Provider, all treatment facilities and personnel, laboratories and collections sites current releases complying with state and federal laws. The releases shall

allow the Department, its designee, and any employee of the Department of Regulation and Licensing, Division of Enforcement to: (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Applicant's treatment and rehabilitation. Copies of these releases shall immediately be filed with Department Monitor.

Drug Screens

5. Applicant shall comply with any request by an employer for a screen for alcohol or controlled substances. In addition, the Department reserves the right to request one or more screens for alcohol or controlled substances, should the Department in its discretion believe a screen is warranted on the basis of a report received. Upon notification the need for a screen, applicant shall comply with obtaining a screen within five [5] hours of notification. All screens shall be performed according to standard department procedures. Applicant shall be responsible for all costs associated with obtaining screens.
6. Within fifteen (15) days of this Order, Applicant shall enroll and begin participation in a drug monitoring program which is approved by the Department ("Approved Program"). A list of Approved Programs pursuant to Wis. Adm. Code § RL 7.11 is available from the Department Monitor.
7. Applicant shall obtain a urine screen within 12 hours of completion of any auction conducted under color of his Wisconsin license and shall arrange for the results of the screen to be submitted to the Department on the same day that the screen is collected.
8. If any urine, blood or hair specimen is positive or suspected positive for any controlled substances or alcohol, Applicant shall promptly submit to additional tests or examinations as the Treatment Provider or the Department or Department Monitor shall determine to be appropriate to clarify or confirm the positive or suspected positive test results.
9. In addition to any requirement of the Approved Program, the Department or Department Monitor may require Applicant to: (a) submit additional urine specimens, (b) submit blood, hair or breath specimens, or (c) furnish any specimen in a directly witnessed manner.
10. All confirmed positive test results shall be presumed to be valid. Applicant must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody.
11. The Approved Program shall submit information and reports to Department Monitor in compliance with the requirements of Wis. Adm. Code § RL 7.11. The Approved Program shall immediately report to Treatment Provider all specimens suspected to have been tampered with or which are positive or suspected positive for controlled substances or alcohol.

Practice Limitations

12. Applicant shall provide a copy of this Final Decision and Order immediately to supervisory personnel at all settings where Applicant works or applies to work as a Wisconsin licensed auctioneer.
13. It is Applicant's responsibility to arrange for written reports from supervisors to be provided to Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall describe the Applicant's auctioneer activities and verify that he is in compliance with the laws governing the practice of auctioneers and the terms of this Order.
14. Applicant shall report to the Department any change of employment status, residence, address or telephone number within five (5) days of the date of a change.

DEPARTMENT MONITOR

15. The Department Monitor is the individual designated by the Department as its agent to coordinate compliance with the terms of this Order. Any requests, petitions, reports and other information required by this Order shall be mailed, e-mailed, faxed or delivered to:

DEPARTMENT MONITOR
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave., P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904

Required Reporting

16. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order by Applicant and any failures of the Approved Program or collection sites to conform to the terms and conditions of this Order.
17. Applicant shall comply with all terms of probation and/or parole imposed upon him, and make arrangements with his probation/parole officer to notify the Department Monitor **immediately** of any violation of probation/parole terms. In addition, Applicant shall make arrangements for the submission of quarterly reports from his probation/parole office attesting to the status of his participation in probation/parole. Applicant shall provide the Board with current releases complying with state and federal laws, authorizing release and access to her probation and parole records.

Change of Treatment Provider or Approved Program by Department

18. If the Department or Department Monitor determines the Approved Program (or, if applicable, the Treatment Provider) has performed inadequately or has failed to satisfy the terms and conditions of this Order, the Department or Department Monitor may direct that Applicant continue treatment and rehabilitation under the direction of another Treatment Provider or Approved Program.

Petitions for Modification

19. Applicant may petition the Department for modification of the terms of this Order at any time following successful completion of his probation. Any such petition shall be accompanied by a written recommendation from Applicant's employer, probation officer and (if applicable) his treatment provider expressly supporting the specific modifications sought. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of §227.01(3)(a), Stats., and Applicant shall not have a right to any further hearings or proceedings on the denial.
20. Applicant shall be responsible for all costs and expenses incurred in conjunction with the monitoring, screening, supervision and any other expenses associated with compliance with the terms of this Order. Being dropped from a program for non-payment is a violation of this Order.

Additional Discipline

22. Failure by Applicant to timely comply with the terms of this limitation and/or any further criminal conviction may result in the revocation of Applicant's limited license without further notice or hearing or other proceeding. A violation of this Order may alternatively, in the discretion of the Department, be the basis for a summary suspension under Wis. Admin. Code RL Ch. 6 or separate disciplinary action under Wis. Stat. § 480.24.

Dated at Madison, Wisconsin this 31st day of January, 2006.

Steven M. Gloe
On behalf of the Department of
Regulation and Licensing

[1] If so ordered,

- a. Applicant shall participate in, cooperate with and follow all treatment recommended by the Treatment Provider.
- b. Applicant shall provide Treatment Provider with a copy of this Final Decision and Order immediately.
- c. Applicant's Treatment Provider shall be responsible for coordinating Applicant's drug monitoring as required under the terms of this Order, and shall immediately report any relapse, violation of any of the terms and conditions of this Order, and any suspected unprofessional conduct, to the Department Monitor. If Applicant's Treatment Provider becomes unable or unwilling to continue to serve as a treatment provider, Applicant shall immediately seek approval of a successor treatment provider by the Department or Department Monitor.
- d. Applicant's Treatment Provider shall submit formal written reports to Department Monitor on a quarterly basis, as directed by Department Monitor. Treatment Provider shall report immediately to Department Monitor any violation or suspected violation of this Order.

e. Applicant shall report all medications and drugs, over-the-counter or prescription, taken by Applicant to Treatment Provider within 24 hours of ingestion or administration, and shall identify the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. If Applicant has not provided a release as required by C.9 above, within 24 hours of a request by Treatment Provider or the Department or Department Monitor, Applicant shall provide releases in compliance with state and federal laws. The releases shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Applicant's treatment with, and provide copies of treatment records to, the requester.