

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



## **Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions**

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

### **Please read this agreement prior to viewing the Decision:**

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscca>.
- Records not open to public inspection by statute are not contained on this website.

**By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.**

**Correcting information on the DRL website:** An individual who believes that information on the website is inaccurate may contact the webmaster at [web@drl.state.wi.gov](mailto:web@drl.state.wi.gov)

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

---

IN THE MATTER OF THE APPLICATION:

FOR A LICENSE TO PRACTICE AS A	:	FINAL DECISION
REAL ESTATE SALESPERSON	:	AND ORDER
	:	LS0508101REB
DANIEL U. KOSOSKI,	:	
APPLICANT.	:	

---

Division of Enforcement Case No. 05REB101

The State of Wisconsin, Department of Regulation and Licensing, 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, Department of Regulation and Licensing.

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 19<sup>th</sup> day of January, 2006.

Celia M. Jackson, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

---

IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE TO PRACTICE AS A	:	PROPOSED DECISION
REAL ESTATE SALESPERSON,	:	LS0508101REB
	:	
DANIEL U. KOSOSKI,	:	
APPLICANT.	:	

---

Division of Enforcement Case File No. 05REB144

**PARTIES**

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

Daniel U. Kososki  
12 Hilltop Court  
Appleton, WI 54914

Department of Regulation and Licensing  
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 on August 10, 2005. The hearing was held on October 6, 2005. Attorney John N. Schweitzer appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Kososki appeared without legal counsel.

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

**FINDINGS OF FACT**

1. Daniel U. Kososki was born on October 28, 1964. Mr. Kososki's latest address on file with the Department of Regulation and Licensing is 12 Hilltop Court, Appleton, WI 54914

2. Mr. Kososki applied for a real estate salesperson license on May 12, 2005. The Department denied this application on June 9, 2005.

3. Mr. Kososki made a timely request for a hearing on the denial of his application for a license as a real estate salesperson.

4. The application for a real estate salesperson's license requires that the applicant answer question "A" under "STATEMENT OF ARREST OR CONVICTION" that states:

"A. Have you ever been convicted of a misdemeanor or a felony, or driving while intoxicated (DWI), in this or any other state, OR are criminal charges or DWI charges currently pending against you? If YES, complete and attach Form #2252."

5. Mr. Kososki's response to question "A" was to check the box marked "Yes".

6. Certified copies of court records received by the Department of Regulation and Licensing from the Clerk of Court's offices in Calumet and Outagamie counties state that Mr. Kososki was convicted of the following crimes:

March 1, 2004 - Misdemeanor – Unlawful Phone Use Threaten With Obscenity [Wis. Stats., § 947.012 (1) (b)]

March 11, 2005 - Misdemeanor – Theft Movable Property <= \$2,500 [Wis. Stats., § 943.20 (1) (a)] and Misdemeanor Disorderly Conduct [Wis. Stats., § 947.01]

### **CONCLUSIONS OF LAW**

1. The Department of Regulation and Licensing has jurisdiction in this matter pursuant to Wis. Stats., § 452.03, 452.05 (1) (a) and 452.09 (1) (e).

2. The circumstances of the crimes for which Mr. Kososki was convicted, as described in Finding of Fact 6 above, substantially relate to the practice of a real estate salesperson.

### **ORDER**

**NOW, THEREFORE, IT IS ORDERED** that the decision of the Department of Regulation and Licensing, Division of Board Services, to deny the application of Daniel U. Kososki be, and hereby is, **AFFIRMED**.

This order is effective on the date on which it is signed on behalf of the Department of Regulation and Licensing.

### **OPINION**

This proceeding was commenced by the filing of a Notice of Hearing on August 10, 2005. The hearing was held on October 6, 2005. Attorney John N. Schweitzer appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Kososki appeared without legal counsel.

#### **I. Applicable Law**

**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.

**452.05 Duties and powers of department.** (1) In addition to the other duties and responsibilities of the department under this chapter, the department shall:

(a) Grant and issue licenses to brokers and salespersons and registrations to time-share salespersons.

**452.09 Application for license, contents.** (1) Form of Application. Any person desiring to act as a broker or salesperson shall submit to the department an application for a license. The application shall be in such

form as the department prescribes and shall include the following:

(e) Any other information which the department may reasonably require to enable it to determine the competency of each applicant, including each business representative of the business entity, to transact the business of a broker or salesperson in a manner which safeguards the interests of the public.

**111.335 Arrest or conviction record; exceptions and special cases. (1)**

(c) Notwithstanding s. 111.322, it is not employment discrimination because of conviction record to refuse to employ or license, or to bar or terminate from employment or licensing, any individual who:

1. Has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the particular job or licensed activity; or

**II. Evidence Presented**

The evidence presented establishes that Mr. Kososki has a conviction record and that the circumstances of the crimes for which he was convicted substantially relate to the practice of a real estate salesperson.

**(A) Background**

On May 12, 2005, Mr. Kososki submitted an application for a license as a real estate salesperson. His application was denied by the Department on June 9, 2005, on the grounds that he was convicted of crimes, the circumstances of which substantially relate to the practice of a real estate salesperson.

The application for a real estate salesperson license requires that the applicant answer question "A" under "STATEMENT OF ARREST OR CONVICTION" that states:

"A. Have you ever been convicted of a misdemeanor or a felony or driving while intoxicated (DWI), in this or any other state, OR are criminal charges or DWI charges currently pending against you? If YES, complete and attach Form #2252."

Mr. Kososki's response to question "A" was to check the box marked "Yes".

Certified copies of court records received by the Department of Regulation and Licensing from the Clerk of Court's offices in Calumet and Outagamie counties state that Mr. Kososki was convicted of the following crimes:

March 1, 2004 - Misdemeanor – Unlawful Phone Use Threaten With Obscenity [Wis. Stats., § 947.012 (1) (b)]

March 11, 2005 - Misdemeanor – Theft Movable Property <= \$2,500 [Wis. Stats., § 943.20 (1) (a)] and Misdemeanor Disorderly Conduct [Wis. Stats., §947.01]

**(B) Conviction of Crimes Substantially Related to the Practice**

The evidence presented establishes that the circumstances of the crimes, for which Mr. Kososki was convicted, substantially relate to practice as a real estate salesperson.

Wis. Stats., § 111.321 and 111.322, prohibit a licensing agency from discriminating against an individual on the basis of a conviction record. Wis. Stats., § 111.335 (1) (c), states, in part, that notwithstanding s. 111.322, it is not discrimination

because of a conviction record to refuse to license any individual who has been convicted of any felony, misdemeanor or other offense the circumstances of which substantially relate to the circumstances of the licensed activity.

The purpose of the exception structured by the Legislature in s. 111.335 (1) (c), Stats., was discussed by the Wisconsin Supreme Court in *County of Milwaukee v. Labor and Industry Review Commission*, 139 Wis. 2d 805, 407 N.W. 2d 908 (1987). Although the Court's discussion focused on the employment area, the societal interests discussed are relevant to the licensing area. The Court stated, Id. at 821, that:

It is evident that the legislature sought to balance at least two interests. On the one hand, society has an interest in rehabilitating one who has been convicted of crime and protecting him or her from being discriminated against in the area of employment. Employment is an integral part of the rehabilitation process. On the other hand, society has an interest in protecting its citizens. There is a concern that individuals, and the community at large, not bear an unreasonable risk that a convicted person, being placed in an employment situation offering temptations or opportunities for criminal activity similar to those present in the crimes for which he had been previously convicted, will commit another similar crime. This concern is legitimate since it is necessarily based on the well-documented phenomenon of recidivism.

In reference to assessing the risk of recidivism, the Supreme Court stated, Id. at 823-824, that:

In balancing the competing interests, and structuring the exception, the legislature has had to determine how to assess when the risk of recidivism becomes too great to ask the citizenry to bear. The test is when the circumstances, of the offense and the particular job, are substantially related. ...

Assessing whether the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed, is the purpose of the test. ...

It is the circumstances which foster criminal activity that are important, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person.

In this case, Mr. Kososki was convicted of unlawful phone use –threaten with obscenity, theft and disorderly conduct. The circumstances surrounding Mr. Kososki's convictions are described in details in the criminal Complaints filed against him. [Exhibits 1, 2]

### **Unlawful Phone Use – Threaten with Obscenity**

On March 20, 2003, Mr. Kososki was charged with telephoning a female acquaintance of his with the intent to frighten, intimidate, threaten or abuse her and did in fact use obscene, lewd or profane language, contrary to Wis. Stats., § 947.012 (1) (b).

Based upon the criminal Complaint filed in Calumet Count, the acquaintance alleged that she received four telephone calls from Mr. Kososki on March 20, 2003. During one of the telephone calls, Mr. Kososki threatened to burn the truck of a

male friend of the female acquaintance. The Complaint further alleges that between March 8, 2003 and March 20, 2003, Mr. Kososki called the female acquaintance at least 13 times, one of which was recorded. Mr. Kososki stated the following on the recorded message: "Push me just try to push me, just a little bit further and you know what your life will be, fucking hell, you won't have a job, you won't have nothing, you won't have a fucking thing, so you better fucking talk to me, alright."

Mr. Kososki was also charged with sending at least 11 e-mail messages and a letter to the female acquaintance in which he threatened her. That charged was dismissed and read into the record for purposes of sentencing.

On March 1, 2004, Mr. Kososki pled no contest and was convicted of Unlawful Phone Use - Threaten with Obscenity. He was sentenced to 60 days in jail; ordered to remain sober, to undergo an AODA assessment and to not have any contact with the female acquaintance. The sentence was withheld and he was placed on probation for 14 months.

### **Theft and Disorderly Conduct**

On August 14, 2002, Mr. Kososki was charged with theft and disorderly conduct. Based upon the criminal Complaint filed in Outagamie county, the manager at Home Depot, stated that a customer by the name of Daniel Kososki had purchased a foot whirlpool with accessories on August 4, 2002. The purchase price was \$4,143.18. The purchased items were delivered to Mr. Kososki's home on August 13, 2002. On August 14, 2002, Mr. Kososki returned to Home Depot and told a store clerk that the whirlpool and accessories had not been delivered to his home. Mr. Kososki requested and was given a refund in the amount of \$4, 143.18, that was credited to his charge card. On March 11, 2005, Mr. Kososki pled no contest and was convicted of theft and disorderly conduct. He was ordered to pay a fine in the amount of \$2,575 and restitution to Home Depot in the amount of \$4,143.18.

Mr. Kososki's behavior, as described in the criminal Complaints filed against him, reflects that he is incapable of practicing in a manner that safeguards the interest of the public. His conviction for theft reflects that he is deceitful and dishonest. If granted a license as a real estate salesperson, Mr. Kososki would be presented with ample opportunities to engage in similar misconduct. In addition, there is insufficient evidence of rehabilitation in the record. In reference to the issuance of a limited license, any conditions imposed would provide inadequate protection to the public.

Based upon the record herein, the Administrative Law Judge recommends that the Department of Regulation and Licensing 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 7th day of December 2005.

Respectfully submitted,

Ruby Jefferson-Moore  
Administrative Law Judge