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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST : FINAL DECISION
: AND ORDER
STACY M. HESPRICH, : LS0511101REB
RESPONDENT. :

Division of Enforcement Case No. 04REB170

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 27th day of April, 2006.

Peter Sveum
Member of the Board
Real Estate Board

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

STACY M. HESPRICH,
RESPONDENT.

PROPOSED
FINAL DECISION AND ORDER
LS # 0511101-REB

[Division of Enforcement Case # 04 REB 170]

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

Stacy M. Hesprich
648 Foxtree Circle # 3
Burlington, WI 53105

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

PROCEDURAL HISTORY

A hearing in the above-captioned matter was held on February 28, 2006 before Administrative Law Judge Dennis C. Schuh. The Division of Enforcement appeared by Attorney John Nicholas Schweitzer. Respondent did not appear.

On November 10, 2005, a Complaint and Notice of Hearing was filed in this matter. The Complaint and Notice of Hearing were mailed to the last known address of the Respondent. On December 2, 2005, the respondent filed a letter response to the complaint. The letter did not deny or otherwise dispute any of the allegations contained in the complaint.

The respondent participated in a telephone prehearing conference on January 31, 2006 during which the date and time of the evidentiary hearing was set. On January 31, 2006, a Memorandum of Prehearing Conference was mailed to the respondent at the address contained in her letter response. The Memorandum set forth the date, time and location of the scheduled evidentiary hearing. Based upon the entire record of this case, the undersigned 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. **Stacy M. Hesprich**, a/k/a Stacy M. Schlitt or Stacey M. Schlitt (Respondent), date of birth 02/09/76, is licensed as a real estate salesperson in the State of Wisconsin, license # 94 56895, which was first granted on 05/15/03.

2. Respondent's most recent address on file with the Department of Regulation and Licensing is 29815 Pinewood Dr., Burlington, WI 53105. Correspondence from respondent during these proceedings provide an address of 648

3. On or about April 29, 2003, Respondent submitted to the Department of Regulation and Licensing, Bureau of Direct Licensing and Real Estate (the Department), an Application for New Salesperson or Broker License, seeking a real estate salesperson's license. Based upon the information provided, the Department granted Respondent a real estate salesperson's license on May 15, 2003.

4. On the April 29, 2003, Application for New Salesperson or Broker License, Respondent responded "Yes" to the following question:

"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?"

5. Because the answer to the question as quoted in paragraph 4 above was "Yes," Respondent was required to complete and attach Form 2252 entitled "Convictions and Pending Charges" to her application. Paragraph 1 of Form 2252 asks the applicant to "List any other names you have ever used, especially any names under which you have been arrested." Respondent left this question blank and provided no response.

6. Paragraph 2 of Form 2252 asks the applicant to "List all felonies, misdemeanors, traffic crimes and other violations of state or federal law of which you have ever been convicted, in this or any other state, whether the conviction resulted from a plea of no contest or a guilty plea or verdict." In response to this requirement, Respondent listed the following:

<u>Offense</u>	<u>Date</u>	<u>Location</u>	<u>Sentence</u>
Domestic Violence-Disorderly Conduct	04/17/02	Home	1 yr. probation

7. Records from the Walworth County, Wisconsin, Circuit Court confirm that Respondent was convicted on July 23, 2002 of disorderly conduct, in violation of Wis. Stat. § 947.01. The offense was committed on April 19, 2002. Sentence was withheld and Respondent was placed on probation for 1 year.

8. The Department of Regulation and Licensing subsequently became aware that in addition to the 2002 disorderly conduct conviction the Respondent listed on her application, Respondent has also been convicted of several other crimes under the name Stacy M. Schlitt, sometimes spelled Stacey M. Schlitt, which were not listed on her application. These convictions are as follows:

October 5, 1994, conviction for Theft-Movable Property (<\$1000), a Class A Misdemeanor, contrary to Wis. Stat. § 943.20(1)(a), in the State of Wisconsin Racine County Circuit Court Case No. 94CM2111; sentence was withheld and Respondent was placed on probation for 1 year with 30 days jail.

October 5, 1994, convictions for four counts of Issuing Worthless Checks (<\$1000), Class A Misdemeanors, contrary to Wis. Stat. § 934.24(1), in the State of Wisconsin Racine County Circuit Court Case No. 94CM2186; sentence was withheld and Respondent was placed on probation for 1 year.

January 30, 1995, conviction for Theft-Movable Property (<\$1000), a Class A Misdemeanor, contrary to Wis. Stat. § 943.20(1)(a), in the State of Wisconsin Racine County Circuit Court Case No. 94CM2518; sentence was withheld and Respondent was placed on probation for 1 year with 45 days jail time.

April 20, 1995, convictions for one count of Theft-Movable Property (<\$1000), as party to the crime, a Class A Misdemeanor, contrary to Wis. Stat. §§ 939.05 and 943.20(1)(a), and one count of Receiving Stolen Property (<\$1000), as party to the crime, a Class A Misdemeanor, contrary to Wis. Stat. §§ 939.05 and 943.34(1)(a), in the State of Wisconsin Racine County Circuit Court Case No. 95CF0132; sentence was withheld and Respondent was placed on probation for 2 years with 20 days in jail.

January 13, 1997, conviction for Theft-Movable Property (<\$1000), a Class A Misdemeanor, as a habitual criminal, contrary to Wis. Stat. §§ 939.62 and 943.20(1)(a), in the State of Wisconsin Racine County Circuit

Court Case No. 96CM2033; a thirty-month prison sentence was imposed and stayed and Respondent was placed on probation for 2 years with 60 days jail time.

9. The Department has not received any notice of change in address for Respondent.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter, pursuant to Wis. Stat. §452.14 (3) (a)
2. The conduct described in Findings of Fact 8, above, constitutes a violation of Wis. Stat. §§452.09 (1), 452.14 (3) (a) and (L), constituting misconduct or unprofessional conduct, and the Respondent is subject to discipline.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the license of Stacy M. Hesprich, as a real estate salesperson in the State of Wisconsin is hereby REVOKED.

IT IS FURTHER ORDERED that costs of this proceeding shall be assessed against the Respondent.

IT IS FURTHER ORDERED that this Order is effective on the date of its signing.

OPINION

The Notice of Hearing and Complaint in this matter were served upon the respondent on November 10, 2005. The respondent did respond by letter.

Respondent's letter stated that she did not intend to withhold information on the application. Respondent asserts that she assumed that a background check would be run. She acknowledges the failure to disclose. She acknowledges the prior convictions with the statement "I have also paid my dues and commitment back to the community for the wrongs I did in my past".

Respondent's letter attempts to set forth potential mitigating circumstances. However, the truthfulness and veracity of those statements can not be adequately tested, as she failed to appear at the hearing. That failure deprived the prosecutor of the ability to test by examination the truthfulness of these statements. The hearing examiner was deprived of the ability to weigh the credibility of the respondent and to judge the true extent of the remorse asserted in the letter.

Section RL 2.14 of the Wisconsin Administrative Code provides that a respondent who fails to answer a complaint or fails to appear at a hearing is in default. If found to be in default, the disciplinary authority may make findings and enter an order on the basis of the complaint and other evidence against the respondent. In this case, the respondent did not file an answer to the above-captioned complaint that disputed the allegations of prior undisclosed criminal convictions of a type that are substantially related to the profession of real estate salesperson. Nor did she appear at the scheduled hearing. The attorney for the complainant moved for an order granting default at the hearing.

The complainant has established a prima facie case that the Respondent Stacy M. Hesprich has violated Wisconsin's real estate licensing law. The complainant's motion for default is granted and the relief requested is granted.

Revocation of the respondent's license has been recommended. It is well established that the objectives of professional discipline include the following: (1) to promote the rehabilitation of the licensee; (2) to protect the public; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481, 485 (1969). The state's purpose in licensing professionals is to protect its citizens.

The state's purpose in licensing professionals is to protect its citizens. *Strigenz*, 103 Wis.2d at 286, 307 N.W.2d at 667. License revocation is the ultimate means of protecting the public short of fining or imprisonment. *Strigenz v. Department of Regulation and Licensing*, 103 Wis.2d 281, 287, 307 N.W.2d 664 (1981)

The respondent has a number of criminal convictions that she failed to disclose on her application. The failure to

disclose could be the result of intentional deceit or, as she claimed, the failure to read and follow the instructions. Either possibility raises concerns for public protection. The public is entitled to the expectation that real estate salespersons will comply with disclosure requirements about the property at issue. The respondent may not be relied upon to comply with this requirement. The profession is also one in which the ability to read complex forms, understand them and follow the directions in completing them accurately is required. The respondent's skill set in this area is also extremely suspect.

The nature of the underlying criminal acts is also a area of concern. The convictions are for theft of personal property, theft of money and issuance of worthless checks. A real estate salesperson will frequently have access to the personal property of individual homeowners. They have access and control over large sums of money and rely on negotiable instruments such as checks to accomplish the essential purpose of the profession. The respondent has shown herself to be unreliable and a risk to the public in each of these areas. In the present circumstance, it appears that Respondent's actions violated several public protection requirements.

There is nothing in the record to suggest that imposing any discipline short of revocation would have a rehabilitative effect on the respondent or deter other licensees from engaging in similar conduct. The respondent failed to appear at the hearing. She presented no evidence that she was willing to or could be expected to agree to limitations that would provide the necessary public protection. She failed to present any evidence in mitigation of the seriousness of her conduct and its potential for harm to the welfare of the public.

Further, to not revoke respondent's license would also wrongly signal others to engage in similar conduct without consequence, thus not constituting proper deterrence. Revocation will therefore act to safeguard the public and deter such conduct by other practitioners.

Costs

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 Real Estate 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 ALJ's recommendation that the full costs of the proceeding be assessed is based on two factors. First, 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 an evidentiary or default hearing, that licensee should bear the costs of the proceeding.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Respectfully submitted this _____ day of March, 2006

Dennis C. Schuh

