

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
THOMAS J. UTECHT	:	
	:	LS06022310REB
RESPONDENT.	:	

Division of Enforcement Case No. 03 REB 205

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

Thomas J. Utecht
4664 Woodfield Court Apt. 1
Nashotah, WI 53058

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

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 (“Board”). The Board has reviewed the Stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Thomas J. Utecht ("Respondent"), whose date of birth is December 19, 1946, whose last known address of record with the Department of Regulation and Licensing ("Department") is 4664 Woodfield Court, Apt. 1, Nashotah, WI 53058, holds a license as a Real Estate Broker in the state of Wisconsin (90-20701). Respondent was granted the license on June 18, 1987, pursuant to Wis. Stat. Ch. 452. The license was placed in non-active status from January 1, 1997 to September 8, 1997, and again from May 16, 2003 to October 13, 2003, due to delinquent taxes owed to the state of Wisconsin, Department of Revenue. Respondent's license will expire on December 31, 2006.

2. On or about April 9, 2003, Respondent was sent a letter stating that his application to renew his real estate broker's license had been denied due to delinquent taxes owed to the state of Wisconsin, Department of Revenue. Respondent was further advised that he had the right to appeal this determination for thirty days from the date of sending the letter, and that he could continue to practice for that thirty day period. The letter was sent via certified mail, return receipt requested. Respondent signed for the letter on April 24, 2003.

3. Respondent did not appeal the denial of the renewal of his real estate broker's license. Therefore, Respondent lost the ability to work under his license effective May 9, 2003. Respondent's license was formally removed from active status on May 16, 2003.

4. Respondent states that he was not aware that his license was not in active status until sometime in July of 2003, when he found that the Department had informed the Multiple Listing Service that his license was no longer in active status. Respondent asserted to the Department that he never knowingly practiced without a license.

5. Respondent continued to act as a real estate licensee throughout the period that his license was suspended. Respondent signed an offer to purchase as a buyer's agent on June 5, 2003, which was received by the listing broker on June 26, 2003. Additionally, Respondent received commissions from closings that occurred on May 29, 2003, July 11, 2003, and August 26, 2003. Respondent asserted to the Department that the only transaction he was involved in during the period of time when his license was not active was the transaction where he signed the offer to purchase described in this paragraph. Respondent claimed to not recall that he was involved in the transactions described in this paragraph where the properties closed and he received commissions totaling over \$10,000.00.

6. Per Wis. Stat. § 452.14(3)(L), a licensee is subject to discipline if he or she has, "Violated any provision of this chapter;"

7. Per Wis. Stat. § 452.03, "No person may engage in or follow the business occupation of, or hold himself or herself out as, or act... as a broker or salesperson without a license."

8. Per Wis. Stat. § 452.14(3)(a), a licensee is subject to discipline if he or she has, "Made a material misstatement... in any information furnished to the board or department;"

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 452.14.

2. The Wisconsin Real Estate Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. By the conduct described in paragraphs 3-5 of the findings of fact, Respondent has acted as a real estate broker without a license, contrary to Wis. Stat. § 452.03, and, consequently, subjected himself to discipline per Wis. Stat. § 452.14(3)(L).

4. By the conduct described in paragraphs 4-5 of the findings of fact, Respondent has made material misstatements in information furnished to the Board or Department, thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(a).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of THOMAS J. UTECHT to practice as a real estate broker in the State of Wisconsin and shall be, and hereby is, SUSPENDED for a period of 42 days, beginning on March 1, 2006.

2. Respondent shall, by September 1, 2006, pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$560.00.
3. Respondent shall, by September 1, 2006, pay a forfeiture in the amount of \$1,000.00.
4. All payments required by this Order shall be mailed 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

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit any payment as set forth above (if any), or fails to timely submit proof of completion of education as set forth above (if any), the Respondent's license (90-20701) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order, and with the suspension called for in this Order not to begin until the other terms of the Order have been complied with.
6. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

2/23/06
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
THOMAS J. UTECHT	:	
	:	LS# _____
RESPONDENT.	:	

Division of Enforcement Case No. 03 REB 205

It is hereby stipulated between Thomas J. Utecht; and attorney Mark A. Herman, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent’s licensure by the Division of Enforcement (Case No. 03 REB 205). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent has been provided with the opportunity to obtain the advice of legal counsel prior to signing this stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent is informed that should the Board adopt this Stipulation, the Board’s final decision and order is a public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Thomas J. Utecht, Respondent
4664 Woodfield Court Apt. 1
Nashotah, WI 53058

Date

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

Date