

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

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IN THE MATTER OF THE APPLICATION	:	
FOR A LICENSE TO PRACTICE AS A	:	
REAL ESTATE SALESPERSON	:	
	:	FINAL DECISION
	:	AND ORDER
PAUL A. HENNINGSSEN,	:	Case No. LS0606011REB
APPLICANT.	:	

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[Division of Enforcement Case No. 06 REB 047]

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

Mr. Paul A. Henningsen  
3025 W. McKinley Boulevard  
Milwaukee, WI 53208

Department of Regulation and Licensing  
Division of Professional Credentialing Processing  
P.O. Box 8935  
Madison, WI 53708-8935

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

**PROCEDURAL HISTORY**

A hearing in the above-captioned matter was held on August 16, 2006, before Administrative Law Judge Jacquelynn B. Rothstein. The Division of Enforcement appeared by attorney Angela Arrington. Mr. Henningsen appeared *pro se*. An administrative law judge heard the case on August 16, 2006 and issued a Proposed Decision on September 13, 2006.

Upon review of the Proposed Decision, the Department of Regulation and Licensing adopts and issues the following Findings of Fact, Conclusions of Law, and Order.

**FINDINGS OF FACT**

1. Paul A. Henningsen's (DOB 05/05/1946) latest address on file with the Department of Regulation and Licensing is 3025 W. McKinley Boulevard in Milwaukee, Wisconsin.
2. Mr. Henningsen applied for a real estate salesperson's license on or about March 22, 2006. The Department of Regulation and Licensing denied his application on March 30, 2006.
3. Following the denial of his application, Mr. Henningsen filed a timely request for a hearing.
4. On January 15, 1996, Mr. Henningsen was convicted of operating a motor vehicle while under influence of intoxicants contrary to Wis. Stat. § 346.63(10(a)).
5. On September 9, 2003, Mr. Henningsen was convicted of mail fraud contrary to 18 U.S.C. § 1341 and was sentenced to thirty-three months in prison. Mr. Henningsen was released from prison on September 2, 2005, and is currently on supervised release until September 1, 2008.

6. Mr. Henningsen's Wisconsin law license was suspended in November 1984 for failure to comply with continuing education requirements. The Wisconsin Supreme Court summarily suspended his law license for two years on May 19, 2004, based upon his criminal convictions.

### **CONCLUSIONS OF LAW**

1. The Wisconsin Department of Regulation and Licensing has jurisdiction in this matter pursuant to Wis. Stat. §§ 452.03 and 452.09.

2. By having been convicted of a crime as set forth in Finding of Fact 4 and 5, the Department of Regulation and Licensing may issue a limited license to Mr. Henningsen in order to ensure the safety and protection of the public pursuant to Wis. Stat. § 452.05.

3. The facts and circumstances of Applicant's convictions referenced above substantially relate to the practice of a real estate salesperson. Applicant by his conduct is subject to action against his license pursuant to Wis. Stat. § 452.14(3)(i) and (k).

### **ORDER**

**NOW, THEREFOR, IT IS ORDERED** that Paul A. Henningsen is hereby granted a license to practice as a real estate salesperson subject to the following limitations, terms, and conditions:

#### **Practice Limitations**

1. Mr. Henningsen shall practice as a real estate salesperson only as an employee of a licensed real estate business entity. The business entity shall designate a Supervising Broker who is a licensed real estate broker in good standing, with no prior discipline, who submits a statement to the Department Monitor that he or she has been designated Mr. Henningsen's Supervising Broker, and that he or she agrees to accept the responsibility of complying with this order.

2. Until otherwise ordered by the Department, Mr. Henningsen shall not hold or disburse client funds as defined in § Wis. Stats 452.13.

#### **Sobriety**

3. Mr. Henningsen shall abstain from all personal use of alcohol and controlled substances as defined in Wis. Stat § 961.01(4), except when prescribed, dispensed or administered by a health care practitioner for a legitimate medical condition. Mr. Henningsen shall disclose Mr. Henningsen's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Mr. Henningsen 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 Mr. Henningsen's treatment with, and provide copies of treatment records to, Treatment Provider and the Department or Department Monitor.

4. Mr. Henningsen 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 Mr. Henningsen's treatment and rehabilitation.

#### **Releases**

5. As applicable, Applicant shall provide and keep on file with his Probation Agent, 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 and Alcohol Screens**

6. Mr. Henningsen 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 Monitor in his or his discretion believe a screen is warranted on the basis of a report received. Upon notification the need for a screen, Mr. Henningsen shall comply with obtaining a screen within five [5] hours of notification. All screens shall be performed according to standard department procedures, and all confirmed positive test results shall be presumed to be valid. Mr. Henningsen shall be responsible for all costs associated with obtaining screens.

#### Treatment

7. The Department reserves the right, based upon reports received, to require Mr. Henningsen upon notification by the Department Monitor to enter into and maintain participation in a program of treatment for drug and alcohol abuse/dependency through completion and discharge from treatment. Mr. Henningsen shall cooperate with and follow all treatment recommendations of his treatment providers. Upon discharge, Respondent shall submit a copy of his discharge summary to the Department Monitor.

8. If applicable, Mr. Henningsen shall provide his treatment providers with a copy of this Final Decision and Order.

9. If treatment is required, Mr. Henningsen's treatment provider shall submit formal written reports to Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall assess Mr. Henningsen's progress, compliance and cooperation in the applicable program. The treatment providers shall report immediately to the Department Monitor any violation or suspected violation of this Order.

#### Reporting Requirements

10. Mr. Henningsen shall provide a copy of this Final Decision and Order to his supervising broker at all settings where Mr. Henningsen works as a real estate salesperson and (if applicable) to his treatment provider.

11. It is Mr. Henningsen's responsibility to arrange for written reports from his supervising broker to be provided to the Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall describe the Respondent's sales activities and verify that he is in compliance with the laws governing the practice of real estate and the terms of this Order.

12. Mr. Henningsen 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.

13. Mr. Henningsen shall remain in full compliances with all terms and conditions of probation and/or parole imposed upon him. He shall immediately provide a complete copy of any Final Decision and Order to his probation agent and arrange for his probation agent to immediately notify the Department Monitor if there is a violation of the terms of his probation or of this Order.

14. Mr. Henningsen shall report any change of employment to the Department Monitor within five days of the change. If Mr. Henningsen changes his employer, he shall provide a complete copy of this Final Decision and Order to the new business entity, and he shall be responsible for having the new business entity comply with this order.

15. Mr. Henningsen is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Mr. Henningsen shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order by Mr. Henningsen.

#### Petitions

16. Mr. Henningsen may petition the Department for a modification of the terms of this Order after two years from the effective date of this Order. Any such modification shall be accompanied by a written recommendation from Mr. Henningsen'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 under s. 227.01 (3) (a), Wis. Stats., and Mr. Henningsen shall not have a right to any further hearings or proceedings on the denial.

## DEPARTMENT MONITOR

17. 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) (608) 261-7904  
department.monitor@drl.state.wi.us

## Costs

18. Mr. Henningsen 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.

## Summary Suspension / Additional Discipline

19. The Department may conduct proceedings for a summary suspension under Wis. Admin. Code ch. RL 6 or separate disciplinary action under Wis. Stat. § 452.14 for violations of this Order.

## **OPINION AND EXPLANATION OF VARIANCE**

### *Opinion*

The threshold question in this case is a determination of whether the circumstances of Mr. Henningsen's convictions are substantially related to the practice of a real estate salesperson. In *County of Milwaukee v. LIRC*, 139 Wis. 2d 805 at 823, 407 N.W.2d 908 (1987), the Court set forth the test to be utilized in making that determination:

We reject an interpretation of this test which would require, in all cases, a detailed inquiry into the facts of the offense and the job. Assessing away from criminal activity and hopefully to rehabilitate them. This is a worthy goal and one that society has shown a willingness to assume, as evidenced by the large sums of money expended in various rehabilitative programs. However, the legislature has clearly chosen to not force such attempts at rehabilitation in employment settings where experience has demonstrated the likelihood of repetitive criminal behavior. *Id.* at 805.

There is sufficient evidence to suggest that Mr. Henningsen's rehabilitation is well underway. However, given his criminal conviction, it is appropriate to include limitations on his real estate salesperson license in order to ensure that the public is adequately protected. Interestingly and rather telling is the fact that Mr. Henningsen has not balked at having limitations imposed upon his credential. Indeed, he has indicated a strong willingness to adhere to them.

The Department of Regulation and Licensing has a long-standing record of issuing limited licenses to individuals seeking real estate salesperson licenses who have had criminal convictions - limited licenses which include safeguards that are intended to protect the public from any future wrongdoing by them. Mr. Henningsen is a similarly situated applicant, having been convicted of a criminal offense. He, like other successful applicants, has demonstrated significant rehabilitative efforts and is now seeking an alternative career. His testimony revealed not only his remorse for his actions, but also the impact his behavior has had on his family and his life. In light of the positive efforts in which Mr. Henningsen has engaged since his conviction, it appears unlikely that he will re-offend in a similar manner. Consequently, based upon the entire record in this case, Mr. Henningsen will be granted a limited license so to practice as a real estate salesperson.

## *Explanation of Variance*

The Department accepts the Findings of Fact and Conclusions of Law of the Proposed Decision in this matter. The Department, however, has modified the Order in the following respects:

The Department added a third Conclusion of Law clarifying that the conduct of Applicant constitutes grounds for disciplinary action against the Applicant;

The Department added a requirement that as a condition of his licensure, Mr. Henningsen maintain compliance with all terms of his probation;

The Department added requirements for maintenance of sobriety and options for required alcohol and drugs screens and treatment; and

The Order now includes notice of potential consequences for violation of the terms of the Order.

These modifications are consistent with other orders recently issued by the Department and extend the “safety net” for public protection in conjunction with the issuance of this license. To progress with his rehabilitation, it is vital that Mr. Henningsen maintain sobriety. It is equally vital to public protection that the options for AODA monitoring and treatment are available to the Department.

Dated at Madison, Wisconsin, this 11<sup>th</sup> day of October, 2006.

STATE OF WISCONSIN  
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