

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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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
	:	LS0604051REB
BERNARD R. REINHARD,	:	
APPLICANT.	:	

Division of Enforcement Case No. 06REB021

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 21st day of February, 2007.

Secretary Celia M. Jackson
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,	:	LS0604051REB
	:	
BERNARD R. REINHARD,	:	
APPLICANT.	:	

Division of Enforcement Case File No. 06REB021

PARTIES

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

Bernard R. Reinhard
8305 County Road E
Oconto Falls, WI 54154

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 April 5, 2006. The hearing in this matter was held on June 2, 2006. Attorney Angela L. Arrington appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Reinhard did not appear at the hearing.

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. Bernard R. Reinhard was born on September 25, 1976. Mr. Reinhard's latest address on file with the Department of Regulation and Licensing is 8305 County Road E., Oconto Falls, WI 54154.

2. Mr. Reinhard applied for a real estate salesperson license in December 2005. The Department denied this application on February 16, 2006, on the grounds that he was convicted of crimes, the circumstances of which substantially relate to the practice of real estate.

3. Mr. Reinhard 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. Reinhard'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 Brown, Oconto and Outagamie counties state that Mr. Reinhard was convicted or found guilty of the following:

June 12, 1999 - Ordinance violation for issuing a worthless check (\$20.00)
June 16, 1999 - Misdemeanor conviction for operating a vehicle after revocation
September 27, 1999 - Misdemeanor conviction for issuing a worthless check (\$211.89)
December 13, 2000 - Ordinance violation for issuing a worthless check (\$25.74)
January 5, 2001 - Misdemeanor conviction for issuing a worthless check (\$29.38)
March 13, 2002 – Felony conviction for 2nd degree sexual assault of a child (2 Counts)

7. Mr. Reinhard's conviction for sexual assault of a child resulted in a sentence of two years in the state prison for Count I and one year and six months in the state prison for Count II. Mr. Reinhard's parole is scheduled to end in October 2011. Mr. Reinhard is a registered sex offender with the Wisconsin Department of Corrections.

8. Mr. Reinhard did not appear at the hearing held in this matter.

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. Reinhard was convicted, as described in Finding of Fact 6 herein, substantially relate to the practice of real estate.

ORDER

NOW, THEREFORE, IT IS ORDERED that the decision of the Department of Regulation and Licensing to deny the application of Bernard R. Reinhard 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 April 5, 2006. The hearing in this matter was held on June 2, 2006. Attorney Angela L. Arrington appeared on behalf of the Department of Regulation and Licensing, Division of Enforcement. Mr. Reinhard did not appear at the hearing.

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; ...

II. Evidence Presented

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

(A) Background

In December 2005, Mr. Reinhard submitted an application for a license as a real estate salesperson. His application was denied by the Department on February 16, 2006, on the grounds that he was convicted of crimes, the circumstances of which substantially relate to the practice of real estate.

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. Reinhard'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 Brown, Oconto and Outagamie counties state that Mr. Reinhard was convicted of the following:

June 12, 1999 - Ordinance violation for issuing a worthless check (\$20.00)
June 16, 1999 - Misdemeanor conviction for operating a vehicle after revocation
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January 5, 2001 - Misdemeanor conviction for issuing a worthless check (\$29.38)
March 13, 2002 – Felony conviction for 2nd degree sexual assault of a child (2 Counts)

Mr. Reinhard's conviction for sexual assault of a child resulted in a sentence of two years in the state prison for Count I

and one year and six months in the state prison for Count II. Mr. Reinhard's parole is scheduled to end in October 2011. Mr. Reinhard is a registered sex offender with the Wisconsin Department of Corrections.

(B) Conviction of Crimes Substantially Related to the Practice

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

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. Reinhard was convicted of 2 felony counts of 2nd degree sexual assault of a child and 2 misdemeanors involving 2 separate incidents for the issuance of worthless checks. In addition, his issuance of worthless checks in numerous other instances resulted in findings of violations of several municipal ordinances.

In reference to Mr. Reinhard's conviction for sexual assault of a child, the practice of real estate would provide ample

opportunity for him to come in contact with the public in private settings, such as showing vacant properties that are listed for sale and performing interior inspection of homes in conjunction with performing real estate broker's market analyses.

In reference to Mr. Reinhard's conviction for the issuance of worthless checks, in my opinion, such conduct reflects that he is dishonest. As a real estate salesperson, not only would he be entrusted to handle trust fund deposits, he would also be entrusted to provide truthful and accurate information on the various real estate documents that must be prepared in conjunction with real estate transactions. In addition, Mr. Reinhard would have easy access to personal identifiable information, including financial information, of the parties to real estate transactions.

In reference to rehabilitation, although Mr. Reinhard was asked to have his parole officer submit a letter to the Department describing his current parole requirements and compliance with supervision, there is no evidence in the record that Mr. Reinhard made an effort to comply with that request. In addition, Mr. Reinhard failed to appear at the hearing to provide evidence of his rehabilitation or of his trustworthiness. As a result, there is no evidence in the record that Mr. Reinhard has been rehabilitated or that he does not pose a danger to the public.

Mr. Reinhard's behavior, as described in Findings of Fact 6 herein, reflects that he is incapable of practicing in a manner that safeguards the interest of the public. If granted a license as a real estate salesperson, Mr. Reinhard would be presented with ample opportunity to engage in the same or similar type of misconduct for which he was convicted. In reference to the issuance of a limited license, any condition imposed would not provide adequate 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 26th day of January 2007.

Respectfully submitted,

Ruby Jefferson-Moore
Administrative Law Judge