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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
GREGORY A. SLAYTON and	:	LS0806191REB
CAMYA L. GUST,	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 03REB283

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 19th day of February, 2009.

Peter A. Sveum
Member
Real Estate Board

**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

IN RE DISCIPLINARY PROCEEDINGS	:	
AGAINST	:	
	:	PROPOSED DECISION AND ORDER
GREGORY A. SLAYTON and	:	
CAMYA L. GUST,	:	Case No. LS 0806191 REB
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 03 REB 283

PARTIES

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

Gregory A. Slayton
P.O. Box 349
Oxford, WI 53952

Camya L. Gust
P.O. Box 242
Oxford, WI 53952

Real Estate Board
P.O. Box 8935
Madison, WI 53708

Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Avenue
Madison, WI 53708

PROCEDURAL HISTORY

This matter was commenced by the filing of a Notice of Hearing and Complaint on June 19, 2008. Mark A. Herman, an attorney with the Division of Enforcement filed the Complaint in this matter on behalf of the Department of Regulation and Licensing. The Respondents, Gregory A. Slayton and Camya L. Gust did not file an Answer to the Complaint. As a result, the Complainant filed a Notice of Motion and Motion for Default Judgment and, in the alternative, a Motion in Limine.^[1] The Respondents did not file a response to the Complainant's Motion for Default Judgment. Based upon the record herein and the motions and supporting information filed therewith, 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. Gregory A. Slayton ("Slayton"), whose last known address of record with the Department of Regulation and Licensing ("Department") is P.O. Box 349, Oxford, WI 53952, and whose date of birth is August 14, 1961, holds a license as a Real Estate Broker (#90-48352) issued by the Department. The license was first granted on February 28, 1996, and will expire on December 14, 2008.
2. Camya L. Gust ("Gust"), whose last known address of record with the Department of Regulation and Licensing

("Department") is P.O. Box 242, Oxford, WI 53952, and whose date of birth is March 20, 1965, holds a license as a Real Estate Broker (#90-51961) issued by the Department. The license was first granted on January 2, 2004, and will expire on December 14, 2008.

3. Sometime prior to October 14, 2000, Mr. Slayton purchased property adjacent to a closed landfill. Mr. Slayton purchased the property for the express purpose of resale, and subdivided the property into several lots ("lots"). Mr. Slayton was aware that the lots were subject to a well set-back restriction due to the proximity of the lots to the closed landfill. Mr. Slayton personally concluded that the well set-back restrictions and the proximity of the lots to the closed landfill would not adversely affect the value of the lots.
4. On October 14, 2000, R.A. and S.A. drafted an offer to purchase four of the lots from Mr. Slayton. Ronald L. Koster (now deceased) was an employee of Mr. Slayton through his real estate agency, Wisconsin Woods & Water. Mr. Koster provided assistance to R.A. and S.A. in drafting their offer to purchase. The form used was a vacant land offer to purchase. The offer reflected that, "Seller has no notice or knowledge of conditions affecting the Property or the transaction other than those disclosed on Addenda A & B." No property condition report was given to the sellers.
5. Addendum A and Addendum B both state that they were drafted by Mr. Slayton. The addenda state that the lots were being sold "as-is." The addenda disclose the well set-back limitation. The addenda do not disclose the reason for the well set-back or otherwise disclose that the properties are adjacent to a closed land-fill.
6. Gregory A. Slayton and Camya L. Gust held themselves out to the public as doing business under the name Affiliated Real Estate Professionals.
7. A review of Department of Regulation and Licensing records does not show that Affiliated Real Estate Professionals is a licensed agency, or an authorized name ("DBA") for any licensed real estate agency.
8. A review of local telephone directory information showed that Affiliated Real Estate Professionals was located at 233 W. Ormsby Street, Oxford, Wisconsin, 53952. This office address was the same as the office addresses for other companies owned by Mr. Slayton, including Wisconsin Woods & Water and Glacier Properties, LLC.
9. The building located at 233 W. Ormsby Street in Oxford, Wisconsin, was sold at sheriff's sale, and no real estate business owned by Mr. Slayton is currently operating at that location.
10. A review of Department of Regulation and Licensing records does not show that Mr. Slayton has changed his address of record with the Department of Regulation and Licensing from P.O. Box 349 in Oxford, Wisconsin since that location was sold.
11. In May of 2008, DOE employees attempted to locate Mr. Slayton but were unsuccessful. In the course of those attempts a telephone number was obtained for Camya L. Gust. The voice mail message for Ms. Gust indicated that she was an agent for Affiliated Real Estate Professionals. A message left on Ms. Gust's voice mail was not returned.
12. A review of Department of Regulation and Licensing records does not show that Ms. Gust has changed her address of record with the Department of Regulation and Licensing from P.O. Box 242 in Oxford, Wisconsin.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to Wis. Stat. § 452.14.
2. By drafting addenda which did not disclose that the lots were adjacent to a closed landfill, and by not otherwise disclosing this information to the buyers in writing, or causing his employee to do the same, the Respondent Gregory A. Slayton has violated Wis. Admin. Code § RL 24.07(2) and has engaged in improper, fraudulent or dishonest dealing in violation of Wis. Stat. § 452.14(3)(k).
3. By advertising and operating under the name Affiliated Real Estate Professionals, which is not a licensed real estate agency, the Respondents Gregory A. Slayton and Camya L. Gust have violated Wis. Admin. Code § RL 23.04(2).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of **GREGORY A. SLAYTON** to practice as a Real Estate Broker in the state of Wisconsin, (#90-48352) and the license of **CAMYA L. GUST** to practice as a Real Estate Broker in the state of Wisconsin, (#90-51961) shall be, and hereby are **REPRIMANDED** for violating Wis. Admin. Code § RL 23.04(2) by advertising and operating under an unauthorized business name.

IT IS FURTHER ORDERED that the license of **GREGORY A. SLAYTON** to practice as a Real Estate Broker in the state of Wisconsin, (#90-48352) shall be, and hereby is **SUSPENDED** for a period of **ONE (1) YEAR** from the effective

date of this order for his violation of Wis. Admin. Code § RL 24.07(2) in connection with his failure to disclose a material adverse fact in a real estate document.

IT IS FURTHER ORDERED that full assessable costs of this proceeding shall be imposed against the Respondents individually, pursuant to Wis. Stat., § 440. 22, in a manner that reflects their proportionate share of the costs incurred.

IT IS FURTHER ORDERED that the assessable costs of the Administrative Law Judge incurred in this proceeding shall be imposed *pro rata* to the Respondents, thereby resulting in an allocation of fifty percent (50%) of the costs to each of the Respondents.

OPINION

The record shows that the Respondents did not file an Answer to the Complaint in this proceeding. The record also shows that numerous attempts were made to contact the Respondents at their last known business addresses on file with the Department and through telephone messages. The Respondents failed to respond to those contacts. The record evidence shows that the business entity, Affiliated Real Estate Professionals, is no longer in operation, the building has been sold and the certified mail sent to that location was returned and marked as “undeliverable, no forwarding address available.”

If a respondent fails to answer as required by RL 2.09 or fails to appear at the hearing at the time fixed therefore, the respondent is in default and the disciplinary authority may make findings and enter an order on the basis of the Complaint and other evidence.^[2] Upon expiration of the applicable 20 day deadline for the filing of an Answer, the Complainant filed a Motion for Default. The Complainant’s motion was supported by an affidavit and a brief describing the service to the Respondents’ last addresses submitted to the Department of Regulation and Licensing via first class mail and certified return receipt mail on June 20, 2008.

The purpose of an administrative hearing in a Class 2 disciplinary proceeding is to provide a fair and efficient forum for the adjudication of allegations of unprofessional conduct against licensees who hold credentials issued by the Department or the regulatory boards. It is the responsibility of Respondents to maintain current addresses and contact information with the Department so that they may be informed and participate in any proceedings affecting their credentials. By failing to do so, the Respondents in effect forfeited their right to participate in the proceedings, to address the allegations and to possibly present exculpatory or mitigating evidence in this disciplinary proceeding. Moreover, as result of their failure to respond, the disciplinary authority is allowed to make findings and enter an order on the basis of the allegations in the Complaint which are deemed admitted.

The allegations in the Complaint which are deemed true as a result of the Respondents’ default involve conduct which is undeniably a violation of the standards of professional conduct for real estate brokers. The disclosure of material adverse facts with respect to a property condition is critical to the practice of an honest and reputable real estate professional. Failure to make such disclosures is prohibited under Wis. Admin Code § RL 24.07(2) and Wis. Stat. § 452.14(3)(k). By engaging in such misconduct, the Respondent Gregory Slayton has acted in an improper, fraudulent and dishonest manner.

Similarly, a licensed broker is prohibited from engaging in real estate activities under a trade name or business entity which is not properly licensed. Wis. Admin. Code § RL 23.03(2). Both Mr. Slayton and Ms. Gust violated this rule governing the practice of the real estate profession.

III. Appropriate Discipline

The Division of Enforcement has requested that the Real Estate Board reprimand and suspend the broker’s license of Respondent Gregory Slayton for a period of one (1) year. With respect to Ms. Gust, the discipline requested was for a reprimand only against her real estate broker’s license. The Division argues that the Respondents’ failure to participate in this disciplinary process or to respond in any way indicates a lack of professional demeanor, candor and responsibility commensurate with the practice of real estate brokers. The Division further argues that the Respondents’ failure to cooperate with these proceedings makes the imposition of full costs assessed reasonable and appropriate. The Division has requested that the costs be assessed jointly and severally.

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). By their failure to respond to the Complaint, the Respondents have legally admitted all of the allegations contained therein. The Respondents unresponsiveness and lack of cooperation suggest that they are not interested in being rehabilitated at this time. By reprimanding and suspending Mr. Slayton's broker's license for a period of one year, the Real Estate Board will prohibit him from engaging in real estate practice for a period of time and thereby protect the public. Additionally, the suspension of Mr. Slayton's license will also serve to deter others from engaging in similar conduct.

The imposition of a somewhat lesser level of discipline against Ms. Gust is commensurate with the recommendations of the Division of Enforcement and her misconduct. By disciplining both Ms. Gust and Mr. Slayton commensurate with their level of culpability, the interests of public protection and deterrence will be achieved. Unfortunately, since the Respondents did not participate in the proceedings it is not possible for this Administrative Law Judge to gauge the rehabilitative effect of the disciplinary recommendations or the Respondents' interest in rehabilitation.

IV. Assessment of Costs

In addition to the discipline to be imposed against the Respondents' credentials, the regulatory authority may assess all or a part of the costs of the proceedings against the Respondent. Wis. Stat. § 440.22(2), provides 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.

This Administrative Law Judge recommends that the Real Estate Board impose the full costs of the proceeding against the Respondents. This recommendation is based upon the analysis used by the Wisconsin Supreme Court in disciplinary proceedings against disciplined attorneys, *see* Supreme Court Rule 22.24 (1m). The Court's rule lists several factors to be considered, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties;
- 4) The respondent's cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licensees, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct; and
- 7) Any other relevant circumstances.

The unprofessional conduct at issue in this proceeding is contrary to the fundamental principles of the real estate profession; honesty, fairness and disclosure of material adverse facts relevant to known property conditions and truthfulness in advertising. These violations are of a serious nature. The record also shows that the Respondents did not cooperate with the disciplinary process, having failed to maintain a current address with the Department or to respond to telephonic messages about the proceeding. Finally, the imposition of full costs is appropriate because the Department of Regulation and Licensing is a "program revenue" agency which means that its operations are funded by license fees fixed proportionately to the costs attributable to the regulation of each profession. It is fundamentally unfair to shift the costs of prosecuting a few members of the profession to the vast majority of the licensees who have not engaged in misconduct. The Respondents have only themselves to blame for the costs associated with this action and should bear them in full.

However, this Administrative Law Judge does not find adequate support for the recommendation of the Division of Enforcement that the costs of this proceeding be assessed jointly and severally against the Respondents. This would mean that both Respondents would be liable individually or together for the full costs. Yet, based upon the allegations in the Complaint, it does not appear that both of the Respondents committed both of the violations. Mr. Slayton was the drafter of the addenda in which the material adverse condition was undisclosed. It was not alleged that Ms. Gust was involved in that misconduct. Both Respondents were, however, operating under the business name of an unlicensed entity. To that extent, the Respondents' level of culpability is somewhat different and the costs assessment should reflect that difference.

Accordingly, for all the reasons expressed in this opinion, and based upon the motions and supporting information submitted, the Administrative Law Judge recommends that the Real Estate Board adopt as its final decision in this matter, the proposed Findings of Fact, Conclusions of Law and Order as set forth herein.

Respectfully submitted this 5th day of December, 2008.

[1] In view of the Respondent's failure to file an Answer to the Complaint or a response to the *Motion for Default*, the need to address the Complainant's *Motion in Limine*, which would have limited the presentation of evidence in a Class 2 hearing, has been rendered moot and is not addressed herein.

[2] The disciplinary authority may, for good cause, relieve the respondent from the effect of such findings and permit the respondent to answer and defend at any time before the disciplinary authority enters an order or within a reasonable time thereafter.