

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
REAL ESTATE SALESPERSON

:
:
:
:
:

FINAL DECISION
AND ORDER
LS0902271REB

HENRY V. SCHULTZ,
APPLICANT.

Division of Enforcement Case No. 08 REB 202

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 19th day of August, 2009.

Celia M. Jackson, Secretary
Department of Regulation and Licensing



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application for a License to Practice
as a Real Estate Salesperson, **HENRY V. SCHULTZ**,
Applicant

PROPOSED DECISION AND ORDER
Case No. LS0902271REB

Division of Enforcement Case No. 08 REB 202

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

Henry V. Schultz
1150 Jonathan Lane
Number 16
Neenah, WI 54956

Mr. Schultz appeared in these proceedings by

Attorney David J. Winkel
Winkel Law Office
36 Jewelers Park Drive #202
Neenah, WI 54956-5904

Department of Regulation and Licensing (Department), by

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

PROCEDURAL HISTORY

On October 23, 2008, the Department of Regulation and Licensing denied Henry Schultz's application for a real estate salesperson's license. (Ex. 107) Schultz timely requested a hearing on the denial of his application. (Notice of Hearing at 2, ¶ 3) On February 27, 2009, a Notice of Hearing was issued on Schultz's request for hearing. The Notice identified the issue raised for consideration at the hearing on the denial of Schultz's application as:

Whether your conviction record constitutes convictions substantially related to the practice of a real estate salesperson within the meaning of Sec. 111.335(1)(c)(1), Stats., and, if so, whether a license can be issued to you, with or without limitations.

Hearing in the matter was held as scheduled on July 16, 2009, at the Department of Regulation and Licensing, Madison, Wisconsin. Appellant appeared by Attorney David Winkel. The Department appeared by Attorney Mark Herman.

FINDINGS OF FACT

1. Henry V. Schultz was born on March 22, 1957. He applied for a real estate salesperson license on or about August 1, 2008. (Ex. 106) As noted above, the Department denied this application on October 23, 2008. (Ex. 107)

2. Schultz's latest address on file with the Department of Regulation and Licensing is 1150 Jonathan Lane, Number 16, Neenah, WI 54956

3. Schultz disclosed on his application that he had been convicted of tax evasion in the United States District Court for the Eastern District of Wisconsin. This was verified by information obtained from the Eastern District that on December 22, 2006, Schultz was convicted of one count of tax evasion, 28 U.S.C. § 7201, in Case No. 06-CR-27. An Amended Judgment in the case was filed on January 24, 2007. (Stip. 2; Exs. 101 and 102)

4. Schultz's conviction was based on his willful failure to pay federal income taxes in 2002. The income that he willfully failed to pay tax on included personal income and income earned by Retirement Planning Specialists, Inc., a Wisconsin corporation wholly owned by Schultz and his then-spouse, Nancy Schultz. (Stip. 3) Schultz had in fact not paid federal income tax since 1995, although he testified that in that year, due to the costs of starting his business, he did not have any actual tax liability. He admits that in subsequent years, he owed taxes but did not pay them. (Schultz testimony) The parties stipulated that income taxes due but not paid totaled approximately \$118,000 (Stip. 3), but disagreed as to whether this was for the entire period that Schultz did not pay taxes or solely for 2002. The disagreement is not regarded as material. The parties stipulated that Schultz failed to pay taxes in reliance upon the advice of what can be described as "professional tax protesters," but with the recognition that he was engaging in a form of "civil disobedience," and that, "(he) did not make this decision lightly." (Stip. 3; Ex. 103) At the hearing, Schultz explained that he paid the withholding and payroll taxes for his employees during this period, but that he came to believe that as a matter of legal or constitutional right, his own payment of income taxes was voluntary. (Schultz testimony)

5. Schultz was initially sentenced to one year in prison. With good time, he served approximately nine months. He was released from prison and placed on federal probation supervision in November 2007. (Schultz testimony)

6. Schultz worked as a licensed financial planner prior to his conviction. At one time, his company managed investments valued at \$88 million. He was investigated by the SEC after the IRS began its investigation. There is no evidence of his engaging in fraudulent activities as a broker or financial planner. (Schultz testimony; *see also* Ex. 1) When he was released from prison, his state and federal broker's licenses were still valid. However, they have since expired for lack of use. Schultz had hoped to continue his business while in prison, but was not successful. (Schultz testimony)

7. Schultz had difficulty finding work after his release from prison. A business willing to hire him and to supervise him was Century 21- Acre Realty, located in the Fox Valley. Schultz took and passed the real estate salesperson exam. Schultz's federal probation officer, Tina Morissette, supported Schultz's application for a salesperson license. However, because his application for a license was denied, he was unable to work for Century 21-Acre Realty.

8. In January 2009, Schultz's probation agent instituted revocation proceedings against him. Schultz's probation was revoked by Order of U.S. District Judge William C. Griesbach, United States District Court for the Eastern District of Wisconsin, dated March 10, 2009. Schultz's violations included his borrowing \$950 from his daughter to buy a car, his failure to submit required reports on a timely basis, and his failure to diligently search for and secure employment. (Stip. 4; Exs. 104 and 105) As a result of having his probation revoked, Schultz was sent back to prison for three months. (Schultz testimony)

9. Schultz was released from prison a second time in June of this year. He has found temporary employment doing telephone book delivery. Much of Schultz's personal and financial affairs has been disrupted. In addition to losing his business, his home was recently foreclosed on. His wife has divorced him. His work as a telephone book delivery person is scheduled to end in a few weeks. Schultz suffers from depression, however this is under control at the present time with medication. Schultz lives with and has custody of his son. Schultz came across at hearing as a decent, articulate, and personable man, who made a very stupid mistake by not paying taxes, for which he has paid dearly. He appears to possess

significant innate abilities which should enable him to succeed if given the chance. He also came across as truthful and forthright when testifying.

10. Schultz is willing to receive a license with limitations similar to those proposed in Exhibit 5. Century 21-Acre Realty remains willing to employ Schultz as a salesperson and to provide the supervision that would be imposed were he to receive a limited license. (Drzewiecki testimony; Ex. 5) If so employed, he would be paid solely on a commission basis. (Drzewiecki testimony) Schultz's probation officer's supervisor supports his application for a real estate license, writing that his licensing and subsequent employment in the real estate field:

... will be a positive step toward bettering his future and meeting the goals of rehabilitation, enabling him to pay his court ordered financial obligations, securing a solid foundation upon which to build a profitable business and rewarding career, and allowing him to remain in compliance with our office as one of his standard conditions of supervision is that he work regularly at a lawful occupation. The U.S. Probation Office makes job acquisition and retention a priority and encourages and supports ongoing communication between employers and probation officers regarding the performance of supervisees. Our office will provide any assistance needed to facilitate Mr. Schultz' acquisition of a real estate license and should you require further assistance, please feel free to contact me at (920) 884-7785. (Ex. 4)

CONCLUSIONS OF LAW

1. Wisconsin Statutes § 452.03 provides:

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.

2. Wisconsin Administrative Code § RL 24.17(1) provides in relevant part:

VIOLATIONS OF LAW. Licensees may not violate or aid or abet the violation of any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson. . . .

3. The parties have stipulated (Stip. 1) and this decision finds that the circumstances of Schultz's federal tax evasion substantially relate to the practices of a real estate salesperson. *See Gibson v. Transportation Comm.*, 106 Wis.2d 22 (1982).

4. The Department appropriately exercised its discretion in denying Schultz's August 1, 2008, application for a real estate broker's license. His underlying crime coupled with the recent revocation of his federal probation warrant a further period prior to licensing during which Schultz should be given the opportunity to demonstrate his ability to comply with the requirements of his probation.

DISCUSSION

Schultz's violations of his federal probation do not evince a lack of honesty, but a failure to comply with official rules. The recent revocation of his probation warrants postponing the granting of a real estate salesperson license in order to afford Schultz a further opportunity to demonstrate his ability to satisfactorily follow his probation rules. Even with the limitations on his license that he proposes, there will remain opportunities for fraudulent acts or financial misconduct. The fact that he is nearly impecunious and the fact that he would be working solely on a commission basis would tend to increase the temptation to try to take advantage of such opportunities. Schultz comes across as a sincere individual, and there is a reasonable chance he would withstand such temptations. However, rather than risk victimization of the public, it is more appropriate to give him more time to demonstrate his rehabilitation.

This decision does not establish the amount of time that would be appropriate before licensing could be granted.

However, assuming Schultz is able to demonstrate his ability to comply with his probation rules, given his age (52), the fact that his probation officer and her supervisor support licensure, the fact that an established Fox Valley realtor is willing to hire him under conditions established by the Department, the fact that there is no evidence of his attempting to defraud any of his former clients, and the fact that his federal conviction appears to have been motivated, in substantial part, by a delusional understanding of his legal rights rather than outright greed, it would be the recommendation of the undersigned that the Department reconsider Schultz's license application in another six months. An advantage to not waiting until Schultz has completed his federal probation to grant him a license (the period suggested by the Department at hearing), is that if Schultz commits an infraction of the state's licensing requirements, he faces the possible sanction of having his federal probation revoked a second time. This should increase his incentive to comply with his licensing obligations.

ORDER

For the reasons set forth above, IT IS ORDERED that the October 23, 2008, denial of the application of Henry V. Schultz's for a real estate broker's license is **AFFIRMED**.

IT IS FURTHER ORDERED that file 08 REB 202 be and hereby is closed as to applicant Henry V. Schultz.

Dated at Madison, Wisconsin on July 21, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____
Peter C. Anderson
Administrative Law Judge