

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 BROKER

:
:
:
:
:

FINAL DECISION
AND ORDER
LS0905121REB

PHILIP G. PRAHL,
RESPONDENT.

Division of Enforcement Case No. 09 REB 017

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 Broker **PHILIP G. PRAHL**,
Respondent

PROPOSED DECISION AND ORDER
Case No. LS0905121REB

Division of Enforcement Case No. 09 REB 017

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

Philip G. Prah
957 Cedar Road
Mosinee, WI 54455

Department of Regulation and Licensing (Department), by

Attorney Angela L. Arrington
Department of Regulation and Licensing
Division of Enforcement
P. O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

On February 3, 2009, the Department of Regulation and Licensing denied Philip Prah's application for a real estate broker's license. (Ex. 105) On or about February 5, 2009, Prah timely requested a hearing on the denial of his application. (Ex. 106) On May 12, 2009, a Notice of Hearing was issued on Prah's request for hearing. The Notice identified the issue raised for consideration at the hearing on the denial of Prah's application as:

Whether a real estate broker's license may be granted in the State of Wisconsin to a person who has been convicted of the crimes that Mr. Prah has been convicted of?

Hearing in the matter was held as scheduled on June 29, 2009, at the Department of Regulation and Licensing, Madison, Wisconsin. Appellant appeared *pro se*. The Department appeared by Attorney Angela Arrington.

FINDINGS OF FACT

1. Philip G. Prah was born on March 13, 1982. Mr. Prah's latest address on file with the Department is 957 Cedar Road, Mosinee, Wisconsin, 54455.

2. Some time prior to January 14, 2006, Prah acquired a rental property in Wausau which had been foreclosed on. By acquiring the property, Prah also acquired the property's tenants—Marilyn Schreffler and her family members. In addition to the tenants, other persons visited the property. The conduct, remarks, and/or criminal histories of some of these individuals caused Prah to feel apprehensive in their presence.

3. As of January 14, 2006, Prah1 was involved in the process of attempting to evict Ms. Schreffler. Prah1 felt he needed to communicate with his tenant. However, Ms. Schreffler's phone had been disconnected, and he felt he should go over to the property in person. Prah1 felt apprehensive regarding his personal safety and brought a pistol when he visited the property.

4. When Prah1 visited Ms. Schreffler, his pistol was stuck in the front of his pants, with the butt of the pistol exposed. Prah1 spoke with Ms. Schreffler regarding the pending eviction proceedings and left. After he left, Ms. Schreffler called the police and complained that Prah1 had come to her residence with a gun. She also mentioned that he had driven past her residence several times.

5. A couple of hours after receiving Ms. Schreffler's call, the Wausau police located Prah1's vehicle and pulled him over. During this interaction, the police discovered that Prah1 had a pistol in his briefcase. While the pistol was unloaded, a loaded magazine was nearby. Prah1 was arrested. In Marathon County Circuit Court Case No. 06-CM-148, Prah1 was charged with two counts of carrying a concealed weapon. On January 5, 2007, he pled no contest to and was convicted on one count of carrying a concealed weapon. (Ex. 101)

6. Prah1 reported his conviction to the Department and to the Board. He was subsequently disciplined in Case No. LS-0710292. The discipline in that case included, among other things, a reprimand and a limitation on his real estate salesperson's license to last a minimum of two years, prohibiting him from "be[ing] in possession of a firearm on his person while engaging in face-to-face contact in any real estate activity, including property management." The Board issued its Final Decision and Order in Case No. LS-071-202 on April 24, 2008. (Ex. 102)

7. One month later, on Saturday, May 24, 2008, at approximately 2:00 o'clock in the morning, Prah1 was stopped by the police while driving through the Village of Kronenwetter, Wisconsin. This time, a loaded handgun was found in the console of Prah1's truck. Prah1 was arrested and initially charged with carrying a concealed weapon in Marathon County Case No. 08-CM-1299. On November 25, 2008, Prah1 pled no contest to and was convicted of an amended charge of violating Marathon County's disorderly conduct ordinance. (Ex. 104)

8. Prah1 testified that about five or six days prior to being stopped on May 24, 2008, he had used the gun that was discovered in his truck for target practice at his parents' farm, and that when the police stopped him, he had forgotten that the pistol was in the truck. Prah1 further testified that while he had worked in his capacity as a real estate salesperson during the five or six days that the pistol had been concealed in his truck, he had not had face-to-face contact with anyone as part of his work. Prah1 explained that his employer, Bayview Real Estate, is located in Sturgeon Bay, which is approximately 150 miles from his home. He does most of his work from his home, rather than in-person. Prah1 further explained that most of his work involves foreclosed properties, and that he does not deal directly with customers but with banks and management companies.

9. Prah1 has twice taken and passed the real estate broker's examination. On or about November 17, 2008, Prah1 submitted an application for a real estate broker's license. In his application, Prah1 disclosed his January 2007 conviction for carrying a concealed weapon, as well as his then-pending charge of carrying a concealed weapon. (Ex. 103) On February 3, 2009, the Department denied Prah1's application for a real estate broker's license. The denial noted Prah1's January 5, 2007, conviction for carrying a concealed weapon and his November 25, 2008, conviction for violating Marathon County's disorderly conduct ordinance. The denial notice concluded that "[d]ocumentation on file establishes that you have been convicted of crimes, the circumstances of which substantially relate to the practice of real estate." The legal basis for the denial was identified as Wis. Stat. §§ 111.335(1)(b) and (c), 452.03, and 452.09(1)(e). (Ex. 105) Prah1 filed a timely request for hearing of the denial of his broker's license application on or about February 5, 2009. (Ex. 106)

10. Prah1 testified at hearing that he would agree to the same or similar limitations on his receiving a broker's license as were imposed on his real estate salesperson's license in Case No. LS-0710292.

11. Prah1 testified that he initially believed he was acting within his rights in bringing a pistol when he met with Ms. Schreffler in January 2006. Prah1 credibly testified that he now views the decision to bring a gun as reflecting a lack of judgment.

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. On January 14, 2006, Prah1 violated Wis. Stat. § 941.23 by carrying a concealed weapon. The circumstances of the violation substantially relate to the practices of a real estate broker.

4. On May 24, 2008, Prah1 violated Wis. Stat. § 941.23 a second time by carrying of a concealed weapon. The circumstances of the violation substantially relate to the practices of a real estate broker.

5. The Department appropriately exercised its discretion in denying Prah1's November 17, 2008, application for a real estate broker's license. Consistent with the argument of counsel, Prah1 should be given the opportunity to reapply for a broker's license upon successful completion of the two year limitation of his salesperson license.

DISCUSSION

With respect to the January 14, 2006, incident, Prah1's carrying of a concealed pistol in his vehicle resulted from his decision to meet with a tenant while armed to discuss her eviction. Accordingly, his violation of the law substantially related to the practice of real estate. Prah1 stipulated to the same in Disciplinary Proceeding No. LS-0710292.

Prah1 credibly testified that he brought the pistol out of concern for his safety and not for the purpose of intimidating Ms. Schreffler. While Prah1's concern for his safety was understandable, the idea that the best way to address those concerns was by bringing a loaded weapon reflected a lack of judgment, as Prah1 acknowledged during the hearing. An eviction can be a potentially tense situation. When a weapon is brought to the process, a very real danger is created that someone will react precipitously, possibly by bringing his or her own weapon. An armed confrontation during an eviction creates a real risk of serious injury or even death.

At the hearing, Prah1 argued that his second conviction was not substantially related to the practice of real estate. With respect to his specific actions during the week in question, the claim seems correct. However, regardless of Prah1's customary duties, Wis. Admin. Code § RL 24.17(1) looks to whether a law violation substantially relates to "the practices of a real estate broker or salesperson." It is not unusual for a real estate broker or salesperson to have personal contact with clients, prospective buyers, bank officers, and/or management company representatives, among others. The fact that Prah1 forgot that he had left the pistol in his truck's console increases the risk of accidental shooting. Had Prah1 been called on by his employer to show a property to a couple with children, it would have only taken a child's climbing into his truck and finding the pistol to have the makings of a real tragedy.

Thus, while the circumstances of the second conviction differ significantly from those of the first, it remains the case that the second violation also substantially relates to the practice of Prah1's profession. That Prah1 was convicted of a county disorderly conduct ordinance does not determine whether he in fact violated the law by carrying a concealed weapon. It is undisputed that when Prah1 was stopped he had a loaded pistol in the console of his truck. This constituted the unlawful carrying of a concealed weapon, regardless of the prosecutor's charging decision or plea offer.

Prah1 came across as a forthright and personable young man, who seems ready and able to take responsibility for his

actions and to do what is necessary to satisfy the state's licensing requirements. Consistent with the argument of counsel, assuming Prah! successfully completes his two year disciplinary period in Case No. LS-0710292, he should be given the opportunity to reapply for his broker's license. However, at this time, the Department's denial of his license application is consistent with the law and represents an appropriate exercise of the agency's discretion.

ORDER

For the reasons set forth above, IT IS ORDERED that the February 3, 2009, denial of the application of Philip G. Prah! for a real estate broker's license is **AFFIRMED**.

IT IS FURTHER ORDERED that file 09 REB 017 be and hereby is closed as to applicant Philip G. Prah!.

Dated at Madison, Wisconsin on July 14, 2009.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Peter C. Anderson
Administrative Law Judge