

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

TODD J. VITALE,
RESPONDENT.

:
:
: FINAL DECISION AND ORDER
:
: ORDER 0000586
:

Division of Enforcement Case Number 08 REB 009

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

Todd J. Vitale
128 Village View Ct.
Oregon, Wisconsin 53575

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

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Real Estate Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Todd J. Vitale is licensed in the state of Wisconsin as a Real Estate Salesperson, and presently holds a limited license, number 94-65168, which was granted September 15, 2005.

2. the most recent address on file with the Wisconsin Department of Regulation and Licensing (Department) for Mr. Vitale is 128 Village View Ct., Oregon, Wisconsin 53575.

3. Due to the numerous convictions reported by Mr. Vitale at the time of his application for licensure as a real estate salesperson, he was granted a limited license. The application disclosed the following convictions:

- a. On or about June 20, 1996, Mr. Vitale was convicted of violation of Wis. Stat. § 346.63(1)(a) [operating while intoxicated].
- b. On or about December 16, 1996, Mr. Vitale was convicted of violation of Wis. Stat. § 943.50(1m) [retail theft <=\$1000].
- c. On or about May 20, 1997, Mr. Vitale was convicted of violation of Wis. Stat. § 943.50(1m) [retail theft <=\$1000].
- d. On or about June 26, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 39.22(1) [underage person poss/cons alcohol (2nd)].
- e. On or about July 8, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].
- f. On or about July 8, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 346.63(1)(a) [operating while intoxicated(2nd)].
- g. On or about July 30, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].
- h. On or about December 18, 1998, Mr. Vitale was convicted of violation of Wis. Stat. §§ 346.63(1) and 343.44(1) [operating while intoxicated (3rd); operating after suspension (2nd)].
- i. On or about April 6, 2000, Mr. Vitale was convicted of violation of Wis. Stat. § 343.44(1) [operating after suspension (3rd)].
- j. On or about July 7, 2001, Mr. Vitale was issued a citation of violation of IL Stat. § IVC 625 ILCS 5/11-50(a) [driving under influence of drugs].
- k. On or about January 28, 2002, Mr. Vitale was convicted of violation of Wis. Stat. § 346.935(2) [possess open intoxicants in MV-passenger].
- l. On or about July 26, 2002, Mr. Vitale was convicted of violation of Wis. Stat. §§ 346.04(3) and 346.63(1)(a) [vehicle operator flee/elude officer, operating while intoxicated (5th)].
- m. On or about July 26, 2002, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].
- n. On or about August 1, 2003, Mr. Vitale was convicted of violation of Wis. Stat. § 32.03 [disorderly conduct].

4. On September 15, 2005, pursuant to Final Decision and Order number LS0509151REB, a limited real estate salesperson's license was granted to Mr. Vitale, which was subject to numerous and extensive terms and conditions, including, but not limited to, the following:

- a. Mr. Vitale shall abstain from all personal use of alcohol and controlled substances as defined in §961.01 (4), Stat., except when prescribed, dispensed or administered by a health care practitioner for a legitimate medical condition.
- b. Mr. Vitale is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Mr. Vitale shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order by him.

5. On or about December 15, 2007, the Department Monitor discovered that Mr. Vitale had been convicted of misdemeanor disorderly conduct in Dane County Circuit Court, case no. 2007CM003948. The Department Monitor subsequently referred the matter to the Department's Division of Enforcement for investigation.

6. In correspondence to the Department dated November 15, 2008, Mr. Vitale advised the Department that he had felony charges pending in Dane County Circuit Court, case no. 2008CF001208, for Operating while under the Influence (6th offense).

7. Mr. Vitale was convicted in Dane County Circuit Court, case no. 2008CF001208, of Operating while under the Influence (6th offense) on November 24, 2008, and sentenced on March 5, 2009.

8. In resolution of this matter, Respondent Todd J. Vitale consents to the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. The Respondent failed to report to the Department his convictions in Dane County Circuit Court case nos. 2007CM003948 and 2008CF001208, cited above at Findings of Fact paragraphs 5 and 7, in violation of Wis. Admin. Code § 24.17(1).

3. By the conduct described in the Findings of Fact, paragraph 7, the Respondent violated the terms of the 2005 Department Order, which require, in part, that Respondent abstain from all personal use of alcohol and controlled substances.

4. By the conduct described in the Findings of Fact, paragraph 7, Respondent Todd J. Vitale is subject to discipline pursuant to Wis. Admin. Code § RL 24.17(2).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The licensure of Respondent Todd J. Vitale is hereby REPRIMANDED.
2. The licensure of Respondent Todd J. Vitale is hereby LIMITED as follows:

Practice

- a. Respondent shall not practice real estate in any capacity unless Respondent is in full compliance with this Order.
- b. Respondent shall provide a copy of this Final Decision and Order and any subsequent order immediately to his broker employer at any real estate company where he is employed or becomes employed.
- c. If employed by a broker employer, it is Respondent's responsibility to arrange for the broker employer to file written reports, which may be filed by email, with the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's work performance. Contact information for the Department Monitor is as follows:

Department Monitor
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

- d. If employed by a broker employer, Respondent shall arrange for his broker employer to immediately report to the Department Monitor any conduct of the Respondent that may constitute a violation of this Order or a danger to the public.

Alcohol/Controlled Substances

- e. Respondent shall abstain from all personal use of alcohol.
- f. Respondent shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Respondent shall disclose Respondent's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Respondent 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 Respondent's treatment with, and provide copies of treatment records to, the Board or its designee.

- g. Respondent shall abstain from all use 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 Respondent's treatment and rehabilitation.
- h. Respondent shall report all medications and drugs taken by Respondent to the Department Monitor within 24 hours of ingestion or administration, and shall provide a copy of all prescriptions, along with the identity and contact information for the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. The releases shall comply with state and federal laws, and shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Respondent's treatment with, and provide copies of treatment records to, the requester. Failure by Respondent to provide a release within 24 hours following a request by the Board or its designee shall constitute a violation of this Order.
- i. The Department reserves the right to request one or more screens for alcohol or controlled substances, should the Department Monitor, in its discretion, believe that a screen is warranted. Upon notification of the request for a screen, Respondent shall comply with obtaining a screen within five (5) hours after notification. All screens shall be performed according to standard Department procedures, and all confirmed positive test results shall be presumed to be valid. Respondent must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody. Respondent shall be responsible for all costs associated with obtaining screens.

Treatment

- j. Respondent shall maintain participation in his current program of treatment for drug and alcohol abuse/dependency through completion and discharge from treatment. Respondent 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.
- k. Respondent shall provide his treatment providers with a copy of this Final Decision and Order.
- l. Respondent's treatment provider shall submit formal written reports to the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's progress, compliance and cooperation in the applicable program. Respondent shall arrange for his treatment providers to immediately report to the Department Monitor any violation or suspected violation of this Order.

Probation/Parole/Supervision

- m. Respondent shall not violate any law. Other than traffic violations punishable only by forfeiture and/or loss of points, any further conviction, including

Operating While Intoxicated, shall result in the automatic and immediate suspension of Respondent's limited license by the Board or the Board's designee without further notice or hearing or other proceeding.

- n. Respondent shall provide a copy of this Final Decision and Order and any subsequent order immediately to his probation/parole/supervision officer.
- o. Respondent shall comply with drug testing as ordered by his probation/parole/supervision officer, and he shall notify the Department Monitor of any positive drug test within 48 hours of said positive test.
- p. While he is under probation/parole/supervision, it is Respondent's responsibility to arrange for his probation/parole/supervision officer to file written reports, which may be filed by email, with the Department Monitor on a quarterly basis, as directed by the Department Monitor. These reports shall assess Respondent's compliance with the terms of his probation/parole/supervision.
- q. While he is under probation/parole/supervision, Respondent shall arrange for his probation/parole/supervision officer to immediately report to the Department Monitor any conduct of the Respondent that may constitute a violation of this Order or a danger to the public.

Miscellaneous

- r. Respondent shall report to the Department Monitor any change of employment status, address or telephone number within five (5) days of the date of a change. Additionally, the Respondent shall notify the Department Monitor on a quarterly basis of the Respondent's compliance with the terms and conditions of the Order. The reports shall include the Respondent's current address and telephone number.
- s. Respondent shall provide and keep on file with his probation/parole/supervision officer, treatment provider, 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 Respondent's treatment and rehabilitation with Respondent's probation/parole/supervision officer and/or treatment provider. Copies of these releases shall immediately be filed with the Department Monitor.
- t. Respondent is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others.
- u. Respondent shall be responsible for all costs and expenses incurred in conjunction with compliance with the terms of this Order. Being dropped from a treatment program or violating the terms of probation/parole/supervision shall constitute a violation of this Order.

3. The limitations set forth at paragraph 2 of this Order shall supersede the limitations imposed in the Department's Order No. LS0509151/REB, dated September 15, 2005.

4. Respondent may petition the Board for modification of the terms of this Order, however no such petition for modification shall occur earlier than one year from the date of this Order. Any such petition for modification shall be accompanied by written recommendations from Respondent's employer (if applicable), his probation/parole/supervision officer (if applicable), and 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 within the meaning of Wis. Stat. § 227.01(3)(a), and Respondent shall not have a right to any further hearings or proceedings on the denial.

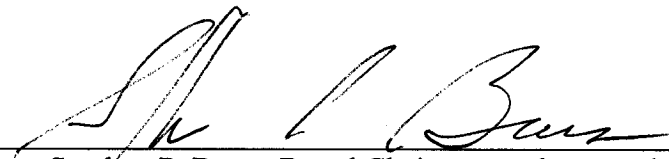
5. Respondent shall pay the Department's costs of this matter in the amount of SIX HUNDRED NINETY DOLLARS (\$690.00) within one (1) year of the date of this Order. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing and shall be sent to the Department Monitor at the address specified above at paragraph 2(c).

6. A violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and, unless otherwise noted above, may result in a summary suspension of Respondent's license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent fails to timely submit payment of the costs as ordered, the Respondent's license (number 94-65168) may, in the discretion of the board or its designee, be SUSPENDED, without further notice or hearing, until Respondent has complied with payment of the costs.

7. This Order is effective on the date of its signing.

Dated this 9 day of December, 2010.

WISCONSIN REAL ESTATE BOARD

By: 
Stephen P. Beers, Board Chair, or another member of the Board