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Before the
State of Wisconsin
DEPARTMENT OF REGULATION AND LICENSING

In the Matter of the Denial of **THE RENEWAL
APPLICATION FOR A LICENSE TO
PRACTICE AS A REAL ESTATE BROKER,**
RICHARD RINIKER, Applicant

FINAL DECISION AND ORDER
ORDER 0000608

Division of Enforcement Case No. 10 REB 107

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 to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 21st day of January, 2011.

A handwritten signature in cursive script, appearing to read "Michael J. Berndt".

Michael J. Berndt, General Counsel

On behalf of the Department of Regulation and Licensing



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Denial of **THE RENEWAL
APPLICATION FOR A LICENSE TO
PRACTICE AS A REAL ESTATE BROKER,
RICHARD RINIKER**, Applicant

PROPOSED DECISION AND ORDER
ORDER 0000608
DHA Case No. DRL-10-0064

Division of Enforcement Case No. 10 REB 107

The parties to this matter for purposes of Wis. Stat. §§ 227.47(1) and 227.53 are:

Richard J. Riniker
7418 Platte Road
Platteville, Wisconsin 53818

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

Wisconsin Department of Regulation and Licensing
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PROCEDURAL HISTORY

The procedural matters leading up to this decision are as follows:

On or about July 1, 2010, the applicant, Richard J. Riniker, applied for the (late) renewal of his real estate broker's license. (Stipulation of Facts, ¶ 4, *see also* DOE Exhibit 1, July 1, 2010 Application).¹ His application indicated that he had called the Department of Regulation and Licensing and "was told to submit a letter from [his] doctor and that [his] situation would be reviewed for late renewal." He further attached a note from his doctor to his application, explaining that at the time his renewal became due, Mr. Riniker was recovering from open heart surgery, and experiencing a fair amount of stress and anxiety, and asking that Mr. Riniker be given some leeway in the renewal of his real estate broker's for these reasons.

¹ DOE Exhibit 1 encompasses Mr. Riniker's entire application file, including Mr. Riniker's application for renewal of his real estate broker's license, the Department of Regulation and Licensing's denial of Mr. Riniker application, and Mr. Riniker's request for a hearing on the Department's denial of his application. Unfortunately, it does not contain page numbers, rendering references to this exhibit very general.

The Department of Regulation and Licensing (Department) denied Mr. Riniker's application on or about July 20, 2010. (Stipulation of Facts, ¶ 6, *see also* DOE Exhibit 1, Notice of Denial). In its "Reasons for Denial," the Department of Regulation and Licensing noted that:

1. The Department received an application for renewal of the real estate broker credential on July 7, 2010.
2. The Department records indicate that the real estate broker license expired on December 31, 2004
3. Documentation on file establishes that the applicant submitted the renewal application more than five years after the renewal date.
4. An applicant for a real estate broker credential whose credential has expired more than five years must complete the real estate broker pre-licensure education and coursework and successfully pass the real estate salesperson and real estate broker examination.
5. Applicant did not submit documentation showing that he had completed the real estate broker pre-licensure education coursework and had successfully passed the real estate salesperson and real estate broker examinations.

The legal basis for this decision is Wis. Stats. §§ 440.08, 452.12, and Wis. Admin. Code § RL 12.04.

(DOE Exhibit 1, Notice of Denial)

On or about August 16, 2010, Mr. Riniker filed a timely request for an administrative hearing on the denial of his application for renewal of his real estate broker license. (Stipulation of Facts, ¶ 7, *see also* DOE Exhibit 1, August 16, 2010, Request for Hearing). He noted that he believed it was a mistake of fact for the Department not to renew his application given the circumstances of his open heart surgery. (DOE Exhibit 1, August 16, 2010 Request for Hearing).

On or about April 15, 2010, the Department of Regulation and Licensing, by Attorney Sarah Norberg, granted and provided appropriate notice of Mr. Riniker's request for a hearing, consistent with Wis. Admin Code § RL 1.08. The notice identified the issues for consideration at the hearing on the denial of Mr. Riniker's application as follows:

Whether Mr. Riniker is eligible for relicensure as real estate broker contrary to Wisconsin Statute secs. 440.08, 452.12(5) and Wis. Admin. Code sec. RL 12.04(2).

Pursuant to due notice, the undersigned administrative law judge held a pre-hearing conference in this case on October 19, 2010. A hearing was scheduled for November 23, 2010. Nonetheless, the undersigned administrative law judge encouraged the parties to talk with one another regarding the legal implications of Mr. Riniker's failure to renew his real estate broker license by January 1, 2010, his claim that he was told that a late renewal would be *considered* by the Board if he provided a note from his doctor and a late fee, and the process by which Mr. Riniker could gain licensure without going to hearing. She further advised Mr. Riniker that even if he was

able to prove his claim that he was told that his application would be considered if he provided a note from his doctor and a late fee, given her standard of review, she saw no legal basis for overturning the Board's decision to deny his reinstatement. She ordered that if Mr. Riniker was aware of any such legal basis, he was to provide it to her by October 29, 2010. (See October 19, 2010 Scheduling Order). Mr. Riniker failed to provide any such legal basis.

On or about November 12, 2010, the Department of Regulation and Licensing, by Sarah Norberg, filed a Motion to Dismiss, asking the undersigned administrative law judge to affirm the Department of Regulation and Licensing's decision to deny Mr. Riniker's application for (late) renewal and cancel the hearing scheduled for November 23, 2010. The undersigned administrative law judge gave Mr. Riniker until December 3, 2010, to file a response. He has not done so.

FINDINGS OF FACT

On the evidence presented, the undersigned ALJ makes the following findings of fact:

1. Richard J. Riniker's date of birth is January 25, 1950.
2. Mr. Riniker's most recent address on file with the Department is 7418 Platte Road, Platteville, WI 53818.
3. Mr. Riniker was licensed in the state of Wisconsin as a real estate broker on August 21, 1975 (license number 90-8059). That license expired on January 1, 2005.
4. Mr. Riniker applied for renewal of his real estate broker license on or about July 1, 2010, more than five (5) years after the renewal date.
5. Wisconsin Stat. § 440.08(3)(b) provides in pertinent part, "The department... may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential." See *infra*, Conclusions of Law, ¶ 4.
6. Wisconsin Admin. Code § RL 12.04(2) provides in pertinent part, "If an applicant files an application for renewal of a real estate license 5 or more years after the renewal date..., the applicant shall... satisfy education and examination requirements²...."
7. Mr. Riniker did not submit proof with his application that he had completed the real estate broker pre-licensure education coursework and successfully passed the real estate salesperson and real estate broker examinations. Rather, he acknowledged that his application for renewal was late, and asked that the requirements for late renewal be waived due to the fact that he was recovering from open heart surgery at the time his five (5)-year window for renewing his license closed.

² Said education and examination requirements include the completion of the real estate broker pre-licensure education coursework and successfully passing the real estate salesperson and real estate broker examinations. See *infra*, Conclusions of Law, ¶ 5.

9. The Department denied Mr. Rinker's renewal application on July 20, 2010, for failure to submit documentation showing that he had completed the real estate broker pre-licensure coursework and had successfully passed the real estate salesperson and real estate broker examinations, as required for applicants for real estate broker credential whose credential has been expired more than five (5) years.

10. The record shows that the Department considered Mr. Riniker's late application and attached statement from his doctor³, and denied it anyway.

11. Mr. Riniker made a timely request for hearing on the denial of his renewal application for a license on August 16, 2010, asserting that it was a mistake of law for the Department not to renew his license under the circumstances, (open heart surgery).

12. In her October 19, 2010 scheduling order, the undersigned administrative law judge order Mr. Riniker to provide any legal basis that would allow her to overturn the Department's decision to deny his renewal application for licensure by October 29, 2010.

13. Mr. Riniker has not provided the undersigned administrative law judge with any legal basis that would allow her to overturn the Department's decision to deny his renewal application for licensure.

CONCLUSIONS OF LAW

1. The Department has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.05(1)(a).

2. The Department's decision to grant or deny a license is discretionary. Wis. Stat. § 441.07(2). *See also* Wis. Stat. § 227.01(3)(a).

3. The administrative law judge's review of such a discretionary decision is limited to determining whether the Department's decision involved a mistake a fact or law. *See* RL 107.

4. Wis. Stat. § 440.08(3)(b) provides, in pertinent part, "The department... may promulgate rules requiring the holder of a credential who fails to renew the credential within 5 years after its renewal date to complete requirements in order to restore the credential."

5. Wis. Admin. Code § RL 12.04(2) (**Renewal after License expiration**, MORE THAN 5 YEARS) provides, "If an applicant files an application for renewal of a real estate license 5 or more years after the renewal date and the applicant is not registered as an inactive licensee, the applicant

³ In addition to considering these factors, Secretary Jackson of the Department of Regulation and Licensing also appears to have (erroneously) been informed that Mr. Riniker had been unable to complete his CE hours. Because this error does not appear to have played into the Department's decision to deny Mr. Riniker's renewal application, it will not be taken into account in the undersigned administrative law judge's proposed decision. *See also, infra.*

shall pay the late renewal fee specified in s. 440.08(2), stats., the examination fee specified in s. 440.05(1)(b) , and satisfy education and examination requirements....⁴”

6. Wis. Stat. § 440.08(4), **Denial of credential renewal**, provides in pertinent part, “If the department determines that an applicant for renewal has failed to comply with [440.08] sub 2(c) or (3)..., the department... may summarily deny the application for renewal.” (Emphasis added).

7. There is no mandatory exception to the above rules for applicant’s who default because of health reasons.

8. By the conduct described in Findings of Fact ¶¶ 3-4 and 7, Mr. Riniker has failed to satisfy the education and examination requirements necessary for renewal of his real estate broker license.

9. Under these facts, the Department’s denial of Mr. Riniker’s renewal for his real estate broker license was not an abuse of discretion, even if he was recovering from open heart surgery at the time his five-year window for renewal became due.⁵

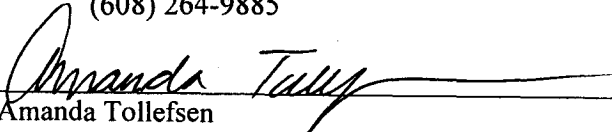
ORDER

IT IS THUS ORDERED, effective the date of this Order:

1. The Department of Regulation and Licensing’s Motion to Dismiss is GRANTED.
2. The Department of Regulation and Licensing’s July 20, 2010 denial of Mr. Riniker’s renewal application for licensure as a real estate broker is AFFIRMED.

Dated at Madison, Wisconsin on December 20, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: 
Amanda Tollefsen
Administrative Law Judge

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⁴ Said education and examination requirements are enumerated in RL 12.04(2)(a)-(b), and include, with respect to applicants for a real estate broker’s license, the completion or the real estate broker pre-licensure education coursework and successfully passing the real estate salesperson and real estate broker examinations.

⁵ Indeed, Mr. Riniker had five years to renew his license. He was recovering from heart surgery only for the very last part of that time period.