

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

HOLLY A. TOMLANOVICH,
RESPONDENT.

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

ORDER 0000679

Division of Enforcement Case Nos. 07 REB 232 and 08 REB 054

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

Holly A. Tomlanovich
836 Hwy 45 S.
PO Box 295
Eagle River, WI 54521

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

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 adopts the attached Stipulation in this matter and makes the following:

FINDINGS OF FACT

1. Holly A. Tomlanovich is licensed in the State of Wisconsin as a Real Estate Broker having license #90-33731, first issued on February 15, 1985. This license was expired from January 1, 2005 through December 28, 2007, and is current through December 14, 2012.

2. Ms. Tomlanovich's most recent address on file with the Department of Regulation and Licensing ("Department") is 836 Hwy. 45 S., PO Box 295, Eagle River, WI 54521.

07 REB 232

3. In September 2007, the Department received a complaint from James Peckenpaugh regarding the Real Estate practice of the Respondent.
4. During the course of the investigation, the Department Investigator discovered that Ms. Tomlanovich's license was expired from January 1, 2005 through December 28, 2007. During this time period, Ms. Tomlanovich continued to practice as a real estate broker, managing vacation rental properties through her business "Bayside Lodging Rentals."
5. Upon notice that she was required to be licensed, Ms. Tomlanovich ceased doing any rental business and began obtaining the required education necessary for relicensure. Upon receiving proof of completion of the required education, Ms. Tomlanovich's license was renewed on December 28, 2007.

08 REB 054

6. In April 2008, the Department received a complaint from Kenneth Holland regarding a check provided by Ms. Tomlanovich that was returned for not sufficient funds (NSF).
7. On August 20, 2007, Ms. Tomlanovich wrote a check to Mr. Holland for \$10,285 from her Bayside Motor Lodge business account. The money was owed to Mr. Holland per his agreement with Ms. Tomlanovich, who managed his vacation property. After Mr. Holland attempted to deposit the check on August 27, 2007, he was notified by his bank on September 19, 2007 that the check had been returned for not sufficient funds.
8. During the investigation, the Department Investigator discovered that Ms. Tomlanovich was operating her property management business without a separate trust fund. During the relevant time period, Ms. Tomlanovich placed all the property rental deposits and payments received from the property management business into her business account maintained for Bayside Motor Lodge, a hotel Ms. Tomlanovich and her husband owned and operated.
9. Upon the investigator's request, the Department Auditor reviewed Ms. Tomlanovich's accounting record from January 1, 2008 through August 20, 2008. In September 2008, the Department Monitor instructed Ms. Tomlanovich to set up a separate trust account for her property management business, which she did promptly.
10. On February 4, 2010, Ms. Tomlanovich provided copies of bank statements for her property management trust account for the time between between May 2009 and December 2009.
11. When reviewing the trust account records, the Department Auditor discovered transferred deposits of various amounts with the notation "transfer." When questioned, Ms. Tomlanovich indicated that it was her practice to accept credit card payments for the rental of

property into her Bayside Motor Lodge Business Account, then to transfer it into her Bayside Rentals Trust Account. Ms. Tomlanovich did this because her credit card scanner was set up only to direct funds into her Bayside Motor Lodge Business Account.

12. When Ms. Tomlanovich was informed that such transfers were considered commingling of funds, she contacted the bank in May 2010 and set up a scanner to deposit the credit card payments for rentals directly into the Bayside Rentals trust account.
13. During his review in February 2010, the Department Auditor was unable to reconcile the ledger, journal, and bank statements for Ms. Tomlanovich's vacation property rental business. Ms. Tomlanovich did not properly reconcile the bank balance or the trial balance of ledger account listings, nor did she verify that those figures equaled the business' journal running balance on a monthly basis.
14. From about January 1, 2010 through December 22, 2010, the Department Investigator, the Department Auditor, the Respondent and her accountant worked to rectify the Respondent's accounts. Per an interim monthly report provided on December 22, 2010, Ms. Tomlanovich's accounting records showed the proper information and balances in reference to her property management business.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14(3) and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).
2. Respondent Holly A. Tomlanovich has violated the following:
 - a. Wis. Stat. § 452.03 by practicing as a real estate broker without a valid license as described in paragraphs 4-5 of the Findings of Fact.
 - b. Wis. Admin. Code § RL 24.15 by issuing a check upon a business account which contained insufficient funds as described in paragraph 7 of the Findings of Fact.
 - c. Wis. Stat. § 452.13(2) by failing to establish a trust account for client funds as described in paragraphs 8-9 of the Findings of Fact.
 - d. Wis. Admin. Code § RL 18.10 by commingling business and client funds as described in paragraphs 11-12 of the Findings of Fact.
 - e. Wis. Admin. Code § RL 18.13(3) and (5) by failing to properly maintain a bookkeeping system, reconcile the accounts, and ensure all records are valid and in agreement as of the date the account statement is reconciled as described in paragraphs 13-14 of the Findings of Fact.

ORDER

NOW, THEREFORE, IT IS ORDERED that:

1. The Real Estate Broker's license of **HOLLY A. TOMLANOVICH** (license #90-33731) is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED that:

2. The real estate broker license of **Holly A. Tomlanovich** (license # 90-33731) is **LIMITED** as follows:
 - a. Holly A. Tomlanovich shall, within six (6) months of this Order, successfully complete three (3) hours of education relating to bookkeeping and/or trust accounts. All courses must be pre-approved by the Department Monitor Liaison.
 - b. Ms. Tomlanovich shall submit proof of the same in the form of verification from the institution providing the education to the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.
3. Respondent **Holly A. Tomlanovich** shall, within 120 days, pay a **FORFEITURE** in the amount of **SEVEN HUNDRED AND FIFTY DOLLARS (\$750.00)** and **COSTS** in the amount of **THREE THOUSAND ONE HUNDRED AND SEVENTY FIVE DOLLARS (\$3175.00)** for a **TOTAL** of **THREE THOUSAND NINE HUNDRED AND TWENTY FIVE DOLLARS (\$3925.00)**.
4. Payment of the forfeiture and costs shall be made payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and 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 forfeiture and costs and proof of successful completion of continuing education as set forth above, the Respondent's license (#90-33731) 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 forfeiture and costs and continuing education requirements.

IT IS FURTHER ORDERED that:

6. The attached Stipulation is hereby accepted.
7. This Order is effective on the date of its signing.

Dated this 17 day of FEBRUARY, 2011.

WISCONSIN REAL ESTATE BOARD

By: 