

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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Before The
State Of Wisconsin
Real Estate Board

In the Matter of the Disciplinary Proceedings
Against Jeffrey Kalvelage and Wilderness Realty,
Inc., Respondent

FINAL DECISION AND ORDER
Order No. 0000681

Division of Enforcement Case No. 07 REB 170

The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision and Order on Remand of the Administrative Law Judge, make the following:

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision and Order on Remand annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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 at Madison, Wisconsin on the 17 day of FEBRUARY, 2011.

Member
Real Estate Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against Jeffrey Kalvelage and Wilderness Realty,
Inc., Respondent

NOTICE OF FILING
PROPOSED DECISION AND
ORDER ON REMAND
DHA Case No. DRL-10-0038

Division of Enforcement Case No. 07 REB 170

To: Jeffrey P. Kalvelage
210 East King Street
Rhineland, WI 54501

Wilderness Realty, Inc.
6685 Highway 17 North
Rhineland, WI 54501

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

PLEASE TAKE NOTICE that a Proposed Decision and Order on Remand in the above-captioned matter has been filed with the Real Estate Board by the Administrative Law Judge Amanda Tollefsen. A copy of the Proposed Decision and Order on Remand is attached hereto.

If you have objections to the Proposed Decision and Order on Remand, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. **Your objections and argument must be received at the Department of Regulation and Licensing, Division of Board Services, Real Estate Board, 1400 East Washington Avenue, Room 116, P.O. Box 8935, Madison, Wisconsin 53708, on or before January 7, 2011.** You must also provide a copy of your objections and argument to all other parties by the same date.

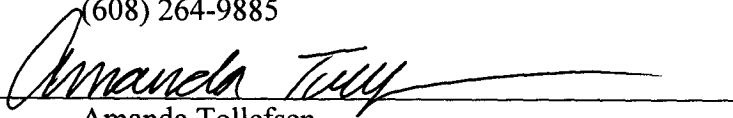
You may also file a written response to any objections to the Proposed Decision and Order on Remand. Your response must be received at the Real Estate Board no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision and Order on Remand is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision and Order on Remand is not binding upon you. After reviewing the Proposed Decision and Order on Remand, the Real Estate Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin on December 20, 2010.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705-5400
Telephone: (608) 266-7644
FAX: (608) 264-9885

By: _____



Amanda Tollefsen
Administrative Law Judge



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of the Disciplinary Proceedings
Against **JEFFREY KALVELAGE AND**
WILDERNESS REALTY, INC., Respondent

PROPOSED DECISION
AND ORDER ON REMAND
DHA Case No. DRL-10-0038

Division of Enforcement Case #07 REB 170

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

Jeffrey P. Kalvelage
210 East King Street
Rhineland, WI 54501

Wilderness Realty, Inc.
6685 Highway 17 North
Rhineland, WI 54501

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

The Department of Regulation and Licensing, Division of Enforcement, by

Attorney Lydia Thompson
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

These proceedings were initiated when the Department of Regulation and Licensing, Division of Enforcement (the "Division") filed a formal Complaint against the Respondent, Jeffrey Kalvelage. The Division filed said Complaint with the Division of Hearings and Appeals on June 7, 2010. On the same date, the Division sent a copy of the Complaint and a Notice of Hearing via certified and first class mail to Respondent Kalvelage at his most recent addresses on file with the Department of Regulation and Licensing; (1) 210 E. King St., Rhineland, WI, 54501, and (2) Wilderness Realty, Inc., 6685 HWY 17 N., Rhineland, WI, 54501. The Notice of Hearing stated that Respondent Kalvelage was required to file a written Answer to the

Complaint within 20 days, failing which “[he would] be found to be in default and a default judgment [could] be entered against [him] on the basis of the Complaint and other evidence and the Wisconsin Real Estate Board [could] take disciplinary action against [him] and impose the costs of the investigation, prosecution and decision of this matter upon [him] without further notice or hearing.”

The Complaint that was sent by certified mail to Respondent Kalvelage at his Wilderness Realty address was returned to the Division as “undeliverable” on June 15, 2010. The Complaint that was sent via first class mail to Respondent Kalvelage at his Wilderness Realty address was likewise returned on June 29, 2010.

The Complaint that was sent by certified mail to Respondent Kalvelage at his 210 E. King St. address was returned to the Division as unclaimed on June 29, 2010. The Complaint that was sent via first class mail to Respondent Kalvelage to his 210 E. King Street address was not returned, indicating that the address to where the Division served the complaint was correct. Indeed, in a June 23, 2010, phone conversation he had with the Consumer Protection Investigator assigned to this case, Respondent Kalvelage confirmed that his 210 E. King Street address was current, but stated that he had chosen not to pursue this matter because he no longer wished to work in the real estate profession.

No Answer has been filed to date.

On June 8, 2010, the undersigned Administrative Law Judge (ALJ) of the Division of Hearings and Appeals issued a Notice of Telephone Prehearing Conference that set a telephone conference with Respondent Kalvelage and Attorney Lydia Thompson of the Division of Enforcement for June 23, 2010. This Notice instructed Respondent Kalvelage to contact the undersigned ALJ to provide the telephone number for which he could be reached for the June 23, 2010 telephone conference, and was sent to the addresses on file for Respondent Kalvelage, as provided above.

Respondent Kalvelage did not contact the undersigned ALJ with a telephone number that he could be reached at for the June 23, 2010, telephone conference. Thus, the conference that was held on that date was without his participation.

At the June 23, 2010 prehearing conference, Attorney Thompson made a motion for default pursuant to Wis. Admin. Code § RL 2.14. The undersigned ALJ summarily accepted Attorney Thompson’s default motion and issued a Notice of Default instructing Respondent Kalvelage that he was in default and that findings would be made and an Order entered on the basis of the Complaint and other evidence. The Notice of Default further ordered Attorney Thompson to provide the undersigned ALJ with the Division’s written recommendations for discipline and the assessment of costs in this matter by June 30, 2010. It was mailed to Respondent Kalvelage at the addresses on record for him as provided above. Attorney

Thompson provided the undersigned ALJ with the Division's written recommendations as to discipline and costs on June 30, 2010.

Respondent Kalvelage has failed to respond to either the Notice of Default issued against him, or the written recommendations provided by Attorney Thompson on June 30, 2010.

FINDINGS OF FACT

1. Jeff Kalvelage ("Respondent"), date of birth January 28, 1977, is duly licensed to practice as a Real Estate Salesperson in the State of Wisconsin (License #94-49163). This license was first granted on September 1, 1998, and is current until December 14, 2010. The last address Mr. Kalvelage reported to the Department of Regulation and Licensing (hereinafter "Department") is 210 East King Street, Rhinelander, Wisconsin, 54501.

2. From January 1, 2001, through January 18, 2001; from January 1, 2003, through July 21, 2003; from January 1, 2005, through February 15, 2005; and from December 15, 2008 through February 24, 2009, Mr. Kalvelage's Real Estate Salesperson license was in expired status with the Department.

3. Mr. Kalvelage is identified in Department records as the owner of Wilderness Realty, Inc. (hereinafter "Wilderness"). Wilderness was duly licensed as a Real Estate Business Entity in the State of Wisconsin (license #91-834762). That license was first granted on August 21, 1995, and expired on December 15, 2008, and has not been renewed. Wilderness' license was also in expired status with the Department from December 15, 2000, through January 18, 2001. The last address Wilderness reported to the Department is 6685 Highway 17 North, Rhinelander, Wisconsin, 54501.

4. On September 22, 2008, Mr. Kalvelage was convicted of two misdemeanor counts of "Theft-Business Setting <=\$2500," and one misdemeanor count of "Issue of Worthless Checks <=\$2500," in Oneida County, Wisconsin Circuit Court Branch 1, Case Number 2008 CM 000133. (True and correct copies of the Summons, Complaint, two Oneida County Sheriff's Department Detective Bureau Supplement Reports and Judgment of Conviction are attached to the Complaint).

5. On or about September 22, 2008, Mr. Kalvelage pled guilty of one felony count of Forgery in Oneida County, Wisconsin Circuit Court Branch 1 (case Number 07CF179) and entered into a Deferred Prosecution Agreement ("Agreement"). Under the terms of the Agreement, the prosecution was immediately suspended and deferred for a period of three (3) years during which time Mr. Kalvelage was to "refrain from any conduct which would constitute a violation of any state or federal laws or the ordinances of any municipality substantially conforming to a state statute." The Agreement further provides that Mr. Kalvelage "shall not write any checks without the authorization from the probation agent, while on probation," and that he "shall comply with the provisions of probation, including payment of restitution." Should

Mr. Kalvelage fail to comply with the terms and conditions of the Agreement during the period of deferred prosecution, then prosecution will resume for the violation(s).

6. The circumstances of both convictions are substantially related to the practice of real estate. Indeed, both crimes were committed during the course of Respondent Kalvelage's professional real estate activities.

7. Mr. Kalvelage did not report either of the above convictions to the Department within 48 hours after the entry of the judgment of convictions.

CONCLUSION OF LAW

1. The Wisconsin Real Estate Board has jurisdiction over this matter pursuant to Wis. Stat. § 452.14(3).

2. Wisconsin Stat. § 440.03(1) provides that the department (of Regulation and Licensing) may promulgate rules defining uniform procedures to be used by the department... and all examining boards and affiliated credentialing boards attached to the department or an examining board, for... conducting [disciplinary] hearings. These rules are codified in Wis. Admin. Code ch. RL.

3. Wisconsin Administrative Code § RL 2.08(1) provides in relevant part that "[t]he complaint, notice of hearing, all orders and other papers required to be served on a respondent may be served by mailing a copy of the paper to the respondent at the last known address of the respondent" and that "[s]ervice by mail is complete upon mailing." Because the Complaint and Notice of Hearing, Notice of Telephone Prehearing Conference, Notice of Telephone Default motion Hearing, and Notice of Default were all mailed to Respondent Kalvelage at his last known address, she was duly served with these papers pursuant to Wis. Admin. Code § RL 2.08.

4. As the licensee, it was Respondent Kalvelage's responsibility to keep his address on record with the Department of Regulation and Licensing current. Wis. Stat. § 440.11(1).

5. Respondent Kalvelage has defaulted in this proceeding pursuant Wis. Admin. Code § RL 2.14 by failing to file and serve an Answer to the Complaint as required by Wis. Admin. Code § RL 2.09.

6. Allegations in a complaint are deemed admitted when not denied in an answer. Wis. Admin. Code § RL 2.09. Respondent Kalvelage has admitted to the allegations of the Complaint by default by not filing an Answer.

7. Wisconsin Stat. § 452.14(3) provides that "[t]he board may revoke, suspend or limit any broker's, salesperson's or time-share salesperson's license or registration, or reprimand the holder of the license or registration, if it finds that the holder of the license or registration has...

(h) [f]ailed, within a reasonable time, to account for or remit any moneys coming into the broker's, salesperson's or time-share salesperson's possession which belong to another person... (i) [d]emonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards the interests of the public... (k) [b]een guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing... and (L) [v]iolated any provision of this chapter.

8. Wisconsin Admin. Code RL § 4.09(2) provides that “[a] holder of any of the credentials set forth in s. RL 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction. Notice shall be made by mail and shall be proven by showing proof of the date of mailing the notice. Notice shall include a copy of the judgment of conviction and a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the credential holder was convicted are substantially related to the practice of the credential holder.”

9. Wisconsin Admin. Code § 24.025(1), RESPONSIBILITIES RELATING TO A CLIENT AND OTHERS, provides that “Licensees shall represent the interests of their client as an agent. Licensees owe all parties the duties under s. 452.133(1), Stats.”

10. Wisconsin Admin. Code § 24.03(2)(b) provides that “Licensees shall act to protect the public against fraud, misrepresentation and unethical practices.”

11. Wisconsin Admin. Code § 24.17(1), VIOLATIONS OF LAW, provides that “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. A licensee who has been convicted of a crime, except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate broker or salesperson, pursuant to s. 111.335 (1) (c) Stats.

12. Wisconsin Admin. Code § 24.17(2), CONVICTION, provides that “[t]he board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.”

13. Wisconsin Admin. Code § 24.17(3), VIOLATION OF STATUTES, provides that “Licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452. Stats. Chs. RL 11 to 26 or any disciplinary order of, the real estate board.”

14. By the conduct described in the Findings of Fact, Respondent Kalvelage is subject to disciplinary action against his license to practice as a Real Estate Salesperson in the State of

Wisconsin, pursuant to Wis. Stat. §§ 452.14(3)(h), 452.14(3)(k), 452.14(3)(L) and Wis. Admin. Code §§ RL 4.09(2), RL 24.025(1), RL 24.03(2)(b), RL 24.17(1), RL 24.17(2) and RL 24.17(3).

COSTS

In *In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS 0802183 CHI), the Chiropractic Examining Board found that:

The ALJ's recommendation and the ... Board's decision as to whether the full costs of the proceeding should be assessed against the credential holder..., is based on the consideration of several factors, including:

- 1) The number of counts charged, contested, and proven;
- 2) The nature and seriousness of the misconduct;
- 3) The level of discipline sought by the parties
- 4) The respondents cooperation with the disciplinary process;
- 5) Prior discipline, if any;
- 6) The fact that the Department of Regulation and Licensing is a "program revenue" agency, whose operating costs are funded by the revenue received from licenses, and the fairness of imposing the costs of disciplining a few members of the profession on the vast majority of the licensees who have not engaged in misconduct;
- 7) Any other relevant circumstances.

The respondent, by nature of her being in default has not presented any evidence regarding any of the above factors that would mitigate the imposition of the full costs of this proceeding. To the contrary, her conduct is of a serious nature. The factual allegations were deemed admitted and proven and there is no argument to apportion any counts that were unproven (being none), or that certain factual findings were investigated and litigated that were unnecessary. Given the fact that the Department of Regulation and Licensing is a "program revenue," agency, whose operating costs are funded by the revenue received for licensees, fairness here dictates imposing the costs of disciplining the respondent upon the respondent and not fellow members of the chiropractic profession who have not engaged in such conduct."

For many same reasons as cited in the *Buenzli-Fritz* decision, Respondent Kalvelage should be assessed the full amount of recoverable costs. Her alleged conduct is of a serious nature, there is no argument that certain factual findings were investigated and litigated unnecessarily, and given the program revenue nature of the Department of Regulation and Licensing, fairness again dictates imposing the costs of disciplining Respondent Kalvelage on

Respondent Kalvelage, and not fellow members of the real estate profession who have not engaged in such conduct. Payment of assessed costs will be necessary before the respondent's license could be reinstated pursuant to Wis. Stat. § 441.07(2). If the Board assesses costs against the respondent, these amount of costs will be determined pursuant Wis. Admin. Code § RL 2.18.

ORDER

IT IS HEREBY ORDERED that Jeffrey P. Kalvelage's real estate salespersons license and his real estate business entity license for Wilderness Realty be revoked without the right to renew.

IT IS FURTHER ORDERED that Respondent Kalvelage shall pay all recoverable costs in this matter in an amount to be established pursuant to Wis. Admin. Code § RL 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Regulation and Licensing and sent to:

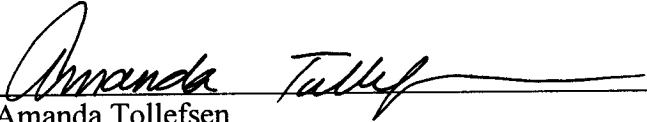
**Department Monitor
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935
Telephone: (608) 267-3817
Fax: (608) 266-2264**

IT IS FURTHER ORDERED that the above-captioned matter be and hereby is closed as to Jeffrey P. Kalvelage.

Dated at Madison, Wisconsin on December 20, 2010.

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: _____


Amanda Tollefsen
Administrative Law Judge