

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JAMES I. ATKINSON and
JIM ATKINSON REAL ESTATE, INC.,
RESPONDENTS.

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FINAL DECISION AND ORDER

ORDER 0001215

Division of Enforcement Case File Number 10 REB 053

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

James I. Atkinson
P.O. Box 738
Portage, WI 53901

Jim Atkinson Real Estate, Inc.
P.O. Box 738
Portage, WI 53901

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

PROCEDURAL HISTORY

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 James I. Atkinson is licensed in the state of Wisconsin as a Real Estate Broker, having license number 90-44697. This license was first granted to him on 01/11/1991 and is current through 12/14/2012.

2. Respondent Jim Atkinson Real Estate, Inc. is licensed in the state of Wisconsin as a Real Estate Business Entity, having license number 91-834079. This license was first granted to the

business entity on 02/26/1991 and is current through 12/14/2012. Mr. Atkinson is the owner of Jim Atkinson Real Estate, Inc.

3. The most recent address on file with the Department of Regulation and Licensing (Department) for James I. Atkinson is P.O. Box 738, Portage, WI 53901; this is the same address on file for Jim Atkinson Real Estate, Inc.

4. At all times relevant to this action, Mr. Atkinson was listed as the managing broker of Jim Atkinson Real Estate, Inc. As the responsible licensee for Jim Atkinson Real Estate, Inc., Mr. Atkinson was at all times relevant to this action responsible for compliance with Wisconsin Statutes Chapter 452 and the Wisconsin Administrative Code for Chapter RL 18.

5. At all times relevant to this action, Mr. Atkinson utilized a trust account with Amcore Bank, located in Portage, Wisconsin, designated as "Atkinson Real Estate Trust Account IBRETA Account." Mr. Atkinson is responsible for this trust account.

6. On or about August 24, 2009, an auditor with the Division of Enforcement (DOE) at the Department audited Jim Atkinson Real Estate, Inc.'s real estate trust account bookkeeping records. During the audit the auditor discovered that from at least January 1, 2007 to July 31, 2009, no trial balances or validations had been performed as is required.

7. Upon contact with the DOE auditor in August 2009, Mr. Atkinson worked with the auditor to update the trust account records from January 1, 2007 through July 31, 2009.

8. On February 4, 2010 the DOE auditor met with Mr. Atkinson to review the trust account bookkeeping records. The auditor discovered that the trial balance and validation were incorrect. The auditor found the following deficiencies in the real estate trust account:

a. A deposit in the amount of \$445.00 was made on December 21, 2007, but was not accounted for, nor was this deposit recorded in the journal.

b. A deposit in the amount of \$495.00 was made on January 30, 2008, but was not accounted for in the journal.

c. The journal balance as of July 31, 2009 was \$2,963.14, but the correct journal balance was \$3,408.14, which is a difference of \$445.00.

d. The trial balance as of July 31, 2009 showed broker funds of \$713.14, but the journal total showed a balance of \$2,963.14, even though the correct trial balance total was \$3,408.14. The correct trial balance includes:

i. Ledger numbers 485 and 487 for a total of \$250.00;

ii. Ledger number 525 for \$500.00;

iii. Ledger number 532 for \$1,000.00; and

iv. Broker funds of \$1,658.14.

e. The broker funds of \$1,658.14 exceed the state of Wisconsin's \$300.00 broker fund maximum allowance by \$1,358.14. In an e-mail to the DOE auditor dated October 8, 2009, Mr. Atkinson stated that he added funds to his trust account in excess of the allowed amount for the purposes of covering expenses.

f. The bank statement reconciliation and the trial balance did not match the journal balance. This resulted in an incorrect validation.

9. Upon the DOE auditor's request, Mr. Atkinson submitted a new trial balance dated February 28, 2010. This trial balance was not properly done because it failed to account for \$450.00 of the \$950.00 total in the trust account. Because the \$450.00 is not accounted for, it appears to be from Mr. Atkinson's personal funds. The validation that was also performed by Mr. Atkinson on February 28, 2010 is not reliable because it relied on an improper trial balance.

10. Mr. Atkinson was previously disciplined for similar trial balance and validation violations in Final Decision and Order LS 9809245 REB in Department case number 98 REB 172.

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. James I. Atkinson has violated Wis. Admin. Code § RL 18.13(1) by his failure to properly maintain the journal.

3. James I. Atkinson has violated Wis. Admin. Code § RL 18.13(4) by his failure to properly perform trial balances.

4. James I. Atkinson has violated Wis. Admin. Code § RL 18.13(5) by his failure to ensure that the reconciled account statement balance, the open ledger account listing, and the journal running balance records are valid and in agreement as of the date the account statement had been reconciled.

5. James I. Atkinson has violated Wis. Admin. Code § RL 18.10 by comingling his personal funds in the trust account and exceeding the maximum allowable sum of \$300.00 (from the broker's personal funds) permitted in the account to cover service charges relating to the trust account. Mr. Atkinson further violated § RL 18.10 by his failure to specifically identify certain deposited amounts as broker or personal funds.

6. Pursuant to Wis. Admin. Code § RL 18.14, by Mr. Atkinson's failure to comply with the rules of ch. RL 18, he has demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public and is therefore subject to discipline under Wis. Stat. § 452.14(3)(i).

ORDER

1. James I. Atkinson is hereby REPRIMANDED.

2. The Real Estate Business Entity, Jim Atkinson Real Estate, Inc., is hereby REPRIMANDED.

3. The license of James I. Atkinson to practice as a Real Estate Broker shall be and is hereby LIMITED as follows:

a. Respondent shall, within six (6) months of the effective date of this Order, take and successfully complete the Trust Accounts, Escrow, and Closing Statement course module under Wis. Admin. Code § 25.02(2)(c) and Financial and Office Management course module under Wis. Admin. Code § 25.02(2)(e) from the 36 hour pre-licensing real estate broker's course from an institution approved by the Real Estate Board or its designee.

b. Respondent shall submit a written request for pre-approval of the institution providing the education to the Department Monitor within thirty (30) days of the date of this Order. The courses shall not be completed online or in any other distance learning setting.

c. Respondent shall, within thirty (30) days of the completion of the courses, submit evidence of his successful completion of the required education and any examination required to successfully complete the Trust Accounts, Escrow, and Closing Statement and Financial and Office Management course modules to the Department Monitor.

d. The education completed pursuant to this requirement shall not be used to satisfy any real estate continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

4. The license of Jim Atkinson Real Estate, Inc. to practice as a Real Estate Business Entity shall be and is hereby LIMITED as follows:

a. Respondent shall employ the services of a CPA firm approved by the Board or its designee, to review and audit Respondent's trust account records on a quarterly basis (every ninety (90) days) for one year. Respondent shall be responsible for providing the report of each audit to the Department Monitor within thirty (30) days of the audit. The first report shall contain an audit of the ninety (90) days immediately following the effective date of this Order.

b. The CPA firm shall review the trust account journal, the monthly bank statements, the monthly account reconciliations, and monthly trial balances.

c. The CPA firm shall provide Respondent with an Accountant's Summary of the trust account records, including a certification indicating whether the records are in compliance with Wis. Admin. Code ch. RL 18. The Accountant's Summary shall also include any comments, criticisms or recommendations about the trust account records which may assist the Respondent in maintaining compliance with ch. RL 18.

d. Respondent shall submit the Accountant's Summary to the Department Monitor with each quarterly report, along with the trust account records reviewed by the CPA firm for the quarter, including, without limitation, the journal, bank statements, monthly account reconciliations and monthly trial balances.

e. Respondent shall be responsible for the cost of employing the CPA firm.

f. The Board or its designee shall review Respondent's trust account records and the Accountant Summaries provided pursuant to this limitation. If Respondent's trust account records submitted to the Department Monitor are not in compliance with Wis. Admin. Code ch. RL 18, the Real Estate Broker license number 90-44697 issued to Respondent James I. Atkinson and the Real Estate Business Entity License number 91-834079 issued to Respondent

Jim Atkinson Real Estate, Inc. may be subject to further disciplinary action approved by the Board.

5. Within 90 days, Respondent James I. Atkinson shall pay COSTS of this proceeding in the amount of SIX HUNDRED SEVENTY-FIVE DOLLARS (\$675.00) to the Wisconsin Department of Regulation and Licensing.

6. Within 90 days, Respondent Jim Atkinson Real Estate, Inc. shall pay COSTS of this proceeding in the amount of SIX HUNDRED SEVENTY-FIVE DOLLARS (\$675.00) to the Wisconsin Department of Regulation and Licensing.

7. Requests, notifications, and payment of costs shall be 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

8. 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 Respondents' licenses. 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 James I. Atkinson or Respondent Jim Atkinson Real Estate, Inc. fail to timely submit payment of the costs or James I. Atkinson fails to complete the required education as ordered and as set forth above, James I. Atkinson's license (number 90-44697) to practice as a Real Estate Broker in the state of Wisconsin and Jim Atkinson Real Estate, Inc.'s license (number 91-834079) to practice as a Real Estate Business Entity in the state of Wisconsin may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until James I. Atkinson and Jim Atkinson Real Estate, Inc. have complied with the required education and payment of the costs.

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

Dated this 16 day of November, 2011.

WISCONSIN REAL ESTATE BOARD

By: 