

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

ROBERT SOMMERS,
RESPONDENT.

:
:
:
:
:

FINAL DECISION AND ORDER

ORDER 0001542

Division of Enforcement Case No. 09 REB 145

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

Robert Sommers
3116 E. Dix Drive
Milton, WI 53563

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

Division of Enforcement
Department of Safety and Professional Services
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 Real Estate Examining 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, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Robert Sommers (dob 8/1/1950) is licensed in the State of Wisconsin as a real estate broker, having license number 90-34693, first issued on 6/17/1985 and current through 12/14/2012. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is 3116 E. Dix Drive, Milton, WI 53563.

2. On October 23, 2009, Gary Voss filed a complaint with the Division of Enforcement alleging that Respondent engaged in bookkeeping and other violations in his handling of a property management agreement with Mr. Voss. This case was subsequently opened for investigation.

3. Since approximately 2005, Respondent has practiced real estate through Sommers Property Management of Southern Wisconsin LLC (Sommers Property Management). Sommers Property Management registered as a limited liability company on 3/22/2005 but did not obtain a real estate entity license until 5/10/2011.

4. Respondent failed to notify the Department when he opened a trust account for Sommers Property Management and failed to provide the Department with the name and number of the account, the name of the depository institution holding the account and information regarding whether the account is for client funds or for real estate trust funds other than client funds.

5. Rental payments received by Respondent for rental property he managed were not always deposited within 48 hours of receipt of the payments. Instead, Respondent's bookkeeper usually waited to make a deposit until most of the monthly payments had been received.

6. Respondent's bookkeeper failed to keep a cash journal and ledger, failed to reconcile the real estate trust account in writing each month and failed to prepare a trial balance of all open items in the real estate trust account. Instead, the bookkeeper kept a rent roll for each property, which showed the amount paid by each tenant each month but did not show how the rent was disbursed.

7. At Mr. Voss' request, in 2009, Respondent opened a separate bank account to hold solely income related to Mr. Voss' rental properties. Records from that account show that checks issued from the account by Respondent were returned for insufficient funds.

8. Mr. Voss terminated his property management agreement with Respondent effective 5/31/2009. The check that Respondent sent Mr. Voss in July 2009 as a final settlement of accounts was returned because there were insufficient funds in the account. Respondent relied on the bank's statement of the amount remaining in the account attributable to Mr. Voss' rental properties and was unable to ascertain the correct amount from his own bookkeeping records.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining 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. By the conduct described in the Findings of Fact, Respondent Robert Sommers violated:

- a. Wis. Admin. Code § RL (now REEB) 23.04(2) by engaging in real estate activities under a different form of business entity (as Sommers Property Management of Southern Wisconsin LLC) before obtaining a real estate entity license for that entity.
- b. Wis. Stat. § 452.13(2)(b) and Wis. Admin. Code §§ RL (now REEB) 18.035(1) and 18.036(1) by failing to provide the Department with information and audit authorization for a real estate trust account.

- c. Wis. Admin. Code § RL (now REEB) 18.031(1) by failing to deposit all real estate trust funds in a real estate trust account within 48 hours of receipt of the trust funds.
- d. Wis. Admin. Code §§ RL (now REEB) 18.13(1), (2), (3), (4) and (5) by failing to: properly maintain a bookkeeping system, including a cash journal and ledger; reconcile the accounts each month; prepare a trial balance of all open items; and ensure all records are valid and in agreement as of the date the account statement is reconciled.
- e. Wis. Admin. Code § RL (now REEB) 24.15 by issuing checks upon business or trust accounts which contained insufficient funds.

3. As a result of the above violations, Respondent Robert Sommers is subject to discipline pursuant to Wis. Stat. §§ 452.14(3)(i) and (L).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

- 1. The attached Stipulation is hereby accepted.
- 2. Respondent Robert Sommers is hereby REPRIMANDED.
- 3. The real estate broker license issued to Respondent Robert Sommers (license number 90-34693) is hereby LIMITED as follows:
 - a. Respondent shall, within one year of the date of this Order, successfully complete three (3) hours of education relating to bookkeeping and/or trust accounts offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam offered for the courses:
 - b. Respondent shall submit proof of completion 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 have been or may be instituted by the Board, Wisconsin Department of Safety and Professional Services or similar authority in any state, and also may not be used in future attempts to upgrade a credential in any state.
 - c. This limitation shall be removed from Respondent's license and Respondent will be granted a full, unrestricted license after satisfying the Board or its designee that Respondent has successfully completed all of the ordered education.

4. Respondent Robert Sommers shall pay COSTS of this matter in the amount of \$1,000 pursuant to the following schedule:

<u>Payment Due Date</u>	<u>Amount Due</u>
July 15, 2012	\$250
September 15, 2012	\$250
November 15, 2012	\$250
January 15, 2013	\$250

5. Proof of successful course completion and payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be mailed, faxed or delivered by Respondent to the Department Monitor at the address below:


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

6. 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 costs as ordered or fails to submit proof of successful completion of the ordered education as set forth above, Respondent's license (no. 90-34693) 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 and completion of the education.

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

WISCONSIN REAL ESTATE EXAMINING BOARD

by:


A Member of the Board

5-10-12
Date