

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF THE APPLICATION
FOR A LICENSE TO PRACTICE AS A
REAL ESTATE BROKER

TODD J. VITALE
APPLICANT

:
:
:
:
: **ORDER 0001914**
: **ORDER GRANTING LIMITED**
: **LICENSE**
:

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

TODD J. VITALE
1216 SPRING ST APT 501
MADISON WI 53715

REAL ESTATE EXAMINING BOARD
c/o Department of Safety and Professional Services
1400 East Washington Avenue
P.O. Box 8935
Madison WI 53708-8935

FINDINGS OF FACT

1. TODD J. VITALE (Applicant) has filed an application for a credential to practice as a real estate broker in the State of Wisconsin.
2. Information received in the application process discloses the following convictions:
 - a. On or about June 20, 1996, Mr. Vitale was convicted of violation of Wis. Stat. § 346.63(1)(a) [operating while intoxicated].
 - b. On or about December 16, 1996, Mr. Vitale was convicted of violation of Wis. Stat. § 943.50(1m) [retail theft <=\$1000].
 - c. On or about May 20, 1997, Mr. Vitale was convicted of violation of Wis. Stat. § 943.50(1m) [retail theft <=\$1000].
 - d. On or about June 26, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 39.22(1) [underage person poss/cons alcohol (2nd)].
 - e. On or about July 8, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].

- f. On or about July 8, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 346.63(1)(a) [operating while intoxicated(2nd)].
 - g. On or about July 30, 1998, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].
 - h. On or about December 18, 1998, Mr. Vitale was convicted of violation of Wis. Stat. §§ 346.63(1) and 343.44(1) [operating while intoxicated (3rd); operating after suspension (2nd)].
 - i. On or about April 6, 2000, Mr. Vitale was convicted of violation of Wis. Stat. § 343.44(1) [operating after suspension (3rd)].
 - j. On or about July 7, 2001, Mr. Vitale was issued a citation of violation of IL Stat. § IVC 625 ILCS 5/11-50(a) [driving under influence of drugs].
 - k. On or about January 28, 2002, Mr. Vitale was convicted of violation of Wis. Stat. § 346.935(2) [possess open intoxicants in MV-passenger].
 - l. On or about July 26, 2002, Mr. Vitale was convicted of violation of Wis. Stat. §§ 346.04(3) and 346.63(1)(a) [vehicle operator flee/elude officer, operating while intoxicated (5th)].
 - m. On or about July 26, 2002, Mr. Vitale was convicted of violation of Wis. Stat. § 947.01 [disorderly conduct].
 - n. On or about August 1, 2003, Mr. Vitale was convicted of violation of Wis. Stat. § 32.03 [disorderly conduct].
3. On September 15, 2005, pursuant to Final Decision and Order number LS0509151REB, a limited real estate salesperson's license was granted to Applicant, which was subject to numerous and extensive terms and conditions, including, but not limited to, the following:
- a) Mr. Vitale shall abstain from all personal use of alcohol and controlled substances as defined in § 961.01(4), Stat., except when prescribed, dispensed or administered by a health care practitioner for a legitimate medical condition.
 - b) Mr. Vitale is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Mr. Vitale shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order by him.
4. On or about December 15, 2007, the Department Monitor discovered that Applicant had been convicted of misdemeanor disorderly conduct in Dane County Circuit Court, case no. 2007CM003948. The Department Monitor subsequently referred the matter to the Department's Division of Enforcement for investigation.

5. In correspondence to the Department dated November 15, 2008, Applicant advised the Department that he had felony charges pending in Dane County Circuit Court, case no. 2008CF001208, for Operating while under the Influence (6th offense). Applicant was convicted in Dane County Circuit Court on November 24, 2008, and sentenced on March 5, 2009.
 6. The Applicant has failed to comply with all the terms and conditions of the Board's December 9, 2010 Order (Order number 000586) involving his license to practice real estate as a salesperson. Inter alia, Applicant has failed to pay costs in the amount of \$690.00.
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CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining Board has authority to act in this matter pursuant to Wis. Stat. §§ 452.03, 452.05(1)(a) and 15.08(5)(c).
2. The facts and circumstances of the convictions referenced above substantially relate to the practice of a real estate broker.
3. Limitations are warranted and necessary to ensure the safe and competent practice of real estate by the Applicant.
4. Applicant, by his conduct, is subject to action against his license pursuant to Wis. Stat. § 452.14(3).

ORDER

NOW, THEREFORE, IT IS ORDERED that TODD J. VITALE is GRANTED a REAL ESTATE BROKER LICENSE, subject to the following LIMITATIONS, TERMS AND CONDITIONS:

Practice Limitations

1. Applicant shall practice real estate only under the general supervision and direction of a Wisconsin licensed real estate broker approved by the REEB, or its designee.
2. Applicant shall not practice real estate in any capacity unless Applicant is in full compliance with this Order.

Reporting Requirements

3. Applicant shall provide a copy of this Order and any subsequent Order(s) immediately to supervisory personnel at all settings where Applicant works as a real estate professional.
4. It is the Applicant's responsibility to arrange for written reports, which may be filed by e-mail, with the Department Monitor on a quarterly basis, or as otherwise directed by the Department Monitor. These reports shall assess Applicant's work performance, describe the applicant's sales activities and verify that he is practicing in compliance with the laws governing the practice of real estate and the terms of this Order. Contact information for the Department Monitor is as follows:

DEPARTMENT MONITOR
Department of Safety and Professional Services
Division of Enforcement
PO Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 267-3817

5. If employed by a real estate entity, Applicant shall arrange for his employer to immediately report to the Department Monitor any conduct of the Applicant that may constitute a violation of this Order or a danger to the public.

Alcohol/Controlled Substances

6. Applicant shall abstain from all personal use of alcohol.
7. Applicant shall abstain from all personal use of controlled substances as defined in Wis. Stat. § 961.01(4), except when prescribed, dispensed or administered by a practitioner for a legitimate medical condition. Applicant shall disclose Applicant's drug and alcohol history and the existence and nature of this Order to the practitioner prior to the practitioner ordering the controlled substance. Applicant shall, at the time the controlled substance is ordered, immediately sign a release in compliance with state and federal laws authorizing the practitioner to discuss Applicant's treatment with, and provide copies of treatment records to, the Board or its designee.
8. Applicant shall abstain from all use of over-the-counter medications or other substances which may mask consumption of controlled substances or of alcohol, create false positive screening results, or interfere with Applicant's treatment and rehabilitation.
9. Applicant shall report all medications and drugs taken by Applicant to the Department Monitor within 24 hours of ingestion or administration, and shall provide a copy of all prescriptions, along with the identity and contact information for the person or persons who prescribed, dispensed, administered or ordered said medications or drugs. The releases shall comply with state and federal laws, and shall authorize the person who prescribed, dispensed, administered or ordered the medication to discuss Applicant's treatment with, and provide copies of treatment records to, the requester. Failure by Applicant to provide a release within 24 hours following a request by the Board or its designee shall constitute a violation of this Order.
10. The Department reserves the right to request one or more screens for alcohol or controlled substances, should the Department Monitor, in its discretion, believe that a screen is warranted. Upon notification of the request for a screen, Applicant shall comply with obtaining a screen within five (5) hours after notification. All screens shall be performed according to standard Department procedures, and all confirmed positive test results shall be presumed to be valid. Applicant must prove by a preponderance of the evidence an error in collection, testing or other fault in the chain of custody. Applicant shall be responsible for all costs associated with obtaining screens.

Treatment

11. Applicant shall maintain participation in his current program of treatment for drug and alcohol abuse/dependency through completion and discharge from treatment. Applicant shall cooperate with and follow all treatment recommendations of his treatment providers. Upon discharge, Applicant shall submit a copy of his discharge summary to the Department Monitor.
12. Applicant shall provide his treatment providers with a copy of this Order.
13. Applicant's treatment provider shall submit formal written reports to the Department Monitor on a quarterly basis, or as otherwise directed by the Department Monitor. These reports shall assess Applicant's progress, compliance and cooperation in the applicable program. Applicant shall arrange for his treatment providers to immediately report to the Department Monitor any violation or suspected violation of this Order.

Probation/Parole/Supervision

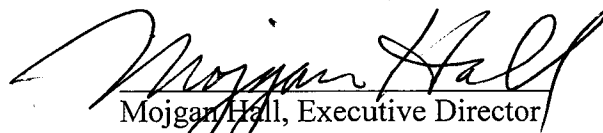
14. Applicant shall not violate any law other than traffic violations punishable only by forfeiture and/or loss of points. Any further conviction, including Operating While Intoxicated, shall result in the automatic and immediate suspension of Applicant's limited license by the Board or the Board's designee without further notice or hearing or other proceeding.
15. While he is under probation/parole/supervision, Applicant shall provide a copy of this Order and any subsequent order immediately to his probation/parole/supervision officer.
16. While he is under probation/parole/supervision, Applicant shall comply with drug testing as ordered by his probation/parole/supervision officer, and he shall notify the Department Monitor of any positive drug test within 48 hours of said positive test.
17. While he is under probation/parole/supervision, it is Applicant's responsibility to arrange for his probation/parole/supervision officer to file written reports (which may be filed by e-mail) with the Department Monitor on a quarterly basis, or as otherwise directed by the Department Monitor. These reports shall assess Applicant's compliance with the terms of his probation/parole/supervision.
18. While he is under probation/parole/supervision, Applicant shall arrange for his probation/parole/supervision officer to immediately report to the Department Monitor any conduct of the Applicant that may constitute a violation of this Order or a danger to the public.

Miscellaneous

19. Applicant shall report to the Department Monitor any change of employment status, address or telephone number within five (5) days of a change. Additionally, the Applicant shall notify the Department Monitor on a quarterly basis of the Applicant's compliance with the terms and conditions of the Order. The reports shall include the Applicant's current address and telephone number.

20. Applicant shall provide and keep on file with his probation/parole/supervision officer, treatment provider, all treatment facilities and personnel, laboratories, and collections sites current releases complying with state and federal laws. The releases shall allow the Department, its designee and any employee of the Division of Enforcement to (a) obtain all urine, blood and hair specimen screen results and patient health care and treatment records and reports, and (b) discuss the progress of Applicant's treatment and rehabilitation with Applicant's probation/parole/supervision officer and/or treatment provider. Copies of these releases shall immediately be filed with the Department Monitor.
21. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others.
22. Applicant shall be responsible for all costs and expenses incurred in conjunction with compliance with the terms of this Order. Being dropped from a treatment program or violating the terms of probation/parole/supervision shall constitute a violation of this Order.
23. Applicant may petition the Board for modification of the terms of this Order, however no such petition for modification shall be considered earlier than one year from the date of this Order. Any such petition for modification shall be accompanied by written recommendations from Applicant's supervising broker, his probation/parole/supervision officer (if applicable), and his treatment provider expressly supporting the specific modifications sought. Further, such petition shall verify that applicant has practiced real estate in compliance with this Order for a minimum of twelve consecutive months. Denial of a petition in whole or in part shall not be considered a denial of a license within the meaning of Wis. Stat. § 227.01(3)(a), and Applicant shall not have a right to any further hearings or proceedings on denial.
24. A violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and, unless otherwise noted above, may result in an immediate suspension of Applicant's license without further hearing or notice. 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.

Dated at Madison, Wisconsin this 10th day of July, 2012


Mojgan Hall, Executive Director
on behalf of Randal Savaglio, Authorized Designee