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**Before the
State Of Wisconsin
Real Estate Examining Board**

In the Matter of Disciplinary Proceedings Against
Harvey J. Goldstein, Respondent

FINAL DECISION AND ORDER

Order No. 0003769

Division of Legal Services and Compliance Case No. 15 REB 002


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

ORDER

NOW, THEREFORE, it is hereby ordered that the Proposed Decision 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 Examining 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 15 day of OCTOBER, 2015.



Member
Real Estate Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Harvey J. Goldstein, Respondent

DHA Case No. SPS-15-0027
DLSC Case No. 15 REB 002

PROPOSED DECISION AND ORDER

The parties to this proceeding for purposes of Wis. Stat §§ 227.47(1) and 227.53 are:

Harvey J. Goldstein
2980 S. Logan Ave.
Milwaukee, WI 53207

Wisconsin Real Estate Examining Board
P.O. Box 8366
Madison, WI 53708-8366

Department of Safety and Professional Services, Division of Legal Services and
Compliance, by

Attorney Andrea E. Brauer
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

PROCEDURAL HISTORY

These proceedings were initiated on March 4, 2015 when the Department of Safety and Professional Services, Division of Legal Services and Compliance (Division), filed and served a Notice of Hearing and Complaint against Respondent Harvey J. Goldstein. The Complaint alleged that Respondent violated Wis. Admin. Code § REEB 24.17(1) by violating any law the circumstances of which substantially relate to the practices of a real estate salesperson and engaged in conduct for which he is subject to discipline pursuant to Wis. Stat. § 452.14(3)(k), (L) and (p). Respondent submitted an Answer on March 24, 2015, wherein he admitted the Division's factual allegations and also admitted he violated Wis. Admin. Code § REEB 24.17(1). He denied that revocation of his license was necessary or appropriate.

Following a prehearing conference on April 6, 2015, which all parties attended, the parties entered into a Joint Stipulation of Facts dated April 20, 2015. Respondent stipulated to all of the Division's factual allegations and further stipulated that he violated Wis. Admin. Code § REEB 24.17(1) and engaged in conduct for which he is subject to discipline pursuant to Wis. Stat. § 452.14(3)(k), (L) and (p). At a telephone status conference held on April 27, 2015, the parties agreed to resolve the issues of discipline and costs by briefing rather than through a hearing. At that time, Respondent indicated he wished to submit an affidavit which would raise mitigating factors. By Briefing Order dated April 27, 2015, the undersigned Administrative Law Judge ordered Respondent to file any affidavit by no later than May 11, 2015. Respondent has not filed any affidavit. The Division filed its brief on June 8, 2015; Respondent filed a response on July 1, 2015; and the Division filed its reply brief on July 27, 2015.

FINDINGS OF FACT

The following Finding of Fact are taken from the parties' Joint Stipulation of Facts.

1. Respondent Harvey J. Goldstein is licensed in the State of Wisconsin as a real estate salesperson, having license number 69459-94, first issued on February 15, 2007 and current through December 14, 2016.

2. The most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) for Respondent is 2980 S. Logan Ave., Milwaukee, WI 53207.

3. On April 14, 2010, the Wisconsin Supreme Court ordered a two-year suspension of Respondent's license to practice law and required Respondent to pay \$3,066 in restitution as well as the costs of the disciplinary proceeding. *See In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein, Attorney at Law: Office of Lawyer Regulation v. Goldstein*, 2010 WI 26, 323 Wis. 2d 706, 782 N.W.2d 388. The Court concluded that Respondent committed 21 counts of misconduct, as follows:

- a. six counts involving conversion of probate funds from three estates while acting as a special administrator and, in one case, a personal representative;
- b. six counts involving trust account and other violations, including the comingling of trust account funds with funds received from Respondent's wife and Respondent's personal business venture;
- c. eight counts involving violations of recordkeeping regulations and personal use of trust account funds, and;
- d. one count of using trust account funds for personal purposes, including real estate ventures.

4. On May 10, 2012, the Wisconsin Real Estate Examining Board (Board) found, based upon the Wisconsin Supreme Court decision, that Respondent violated Wis. Admin. Code

§ RL (now REEB) 24.17(1) by violating laws the circumstances of which substantially relate to the practice of real estate. *See In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein*, Order No. 0001543 (May 10, 2012).

5. The Board's May 10, 2012 Final Decision and Order reprimanded Respondent and limited Respondent's license to: (1) prohibit Respondent from applying for a broker license, (2) prohibit Respondent from maintaining a client trust account, (3) require Respondent to submit quarterly monitoring reports from his supervisor, and (4) require Respondent to complete nine hours of education in the topics of ethics, trust accounts and real estate offers.

6. On October 27, 2014, the Board removed the above-noted limitations and reinstated Respondent's license in full. *See In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein*, Order No. 0001543 (Oct. 27, 2014).

7. On December 1, 2014, Respondent pled guilty to making a materially false, fictitious or fraudulent statement or representation to a federal agent in violation of 18 U.S.C. § 1001(a)(2), a felony offense (United States District Court for the Eastern District of Wisconsin Case No. 14-CR-163).

8. In the December 1, 2014 plea agreement, Respondent admitted the following:

- a. On December 15, 2010, a fire severely damaged a commercial building, including the building and the equipment therein.
- b. Following the fire, Respondent submitted proof of loss statements to the insurance company insuring the business property.
- c. Respondent received insurance proceeds totaling approximately \$44,250.
- d. On August 15, 2013, a special agent employed by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) interviewed Respondent and advised Respondent he was investigating an arson to the commercial building.
- e. Respondent told the ATF special agent the fire was caused by accidental means and he did not have any advance notice that the fire was intentionally set.
- f. In fact, Respondent knew the arson occurred and planned with others to submit false proof of loss statements for the purpose of later collecting an insurance payout.
- g. Respondent agreed he lied to the ATF special agent about his involvement in the arson for profit scheme.

9. On February 27, 2015, the Board issued an Order of Summary Suspension of Respondent's license. *See In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein*, Order No. 0003769 (Feb. 27, 2015). It found that Respondent, by engaging in the

conduct described in paragraphs 7 and 8, above, violated Wis. Admin. Code § REEB 24.17(1) by violating a law the circumstances of which substantially relate to the practices of a real estate salesperson. The Board further determined it was therefore imperatively required and necessary to suspend Respondent's real estate salesperson license immediately to protect the public health, safety and welfare.

10. On March 4, 2015, the United States District Court for the Eastern District of Wisconsin issued a Judgment of Conviction in Case No. 14-CR-163 against Respondent.

11. The court required Respondent to pay \$44,250 in restitution as well as a \$100 assessment and placed Respondent on one year of probation, the terms of which are as follows:

- a. Respondent is subject to home confinement for a period not to exceed 180 days.
- b. Respondent must provide access to all financial information requested by his supervising probation officer; submit monthly financial reports to his supervising probation officer; submit to periodic drug testing; and comply with standard conditions of supervision.
- c. Respondent may not open new lines of credit without prior approval of his supervising probation officer; unlawfully possess or use a controlled substance; possess any firearms; or commit another federal, state or local crime.

12. Respondent violated Wis. Admin. Code § REEB 24.17(1) by violating any law the circumstances of which substantially relate to the practices of a real estate salesperson.

13. As a result of the above conduct, Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(k), (L) and (p).

14. Respondent's position is that his participation in the conduct underlying his conviction was procured over his objection through threats of physical injury to himself and his family by the individual who initiated the arson for profit scheme.

DISCUSSION

Violations

Pursuant to Wis. Stat. § 452.14(3), the Board may revoke, suspend or limit any real estate salesperson's license or registration, or reprimand the holder of the license, if it finds that the licensee has "(k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing;" has "(L) Violated any provision of this chapter or any rule promulgated under this chapter," or has "(p) Been convicted of a felony that is a bar to licensure or registration under s. 452.25(1)(a)."

Wisconsin Stat. § 452.25(1)(a) states: "Notwithstanding ss. 111.321, 111.322, and 111.335 . . . , no applicant who is an individual may be issued a broker's or salesperson's license

or a time-share salesperson's certificate of registration if the applicant has been convicted of a felony.” Wisconsin Admin. Code § REEB 24.17(1) states that “[l]icensees 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.”

Respondent admits that he violated Wis. Admin. Code § REEB 24.17(1) and that he is subject to discipline pursuant to Wis. Stat. § 452.14(3)(k), (L) and (p). The only dispute in this matter is what discipline and costs, if any, are appropriate.

Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the licensee; (2) to protect the public from other instances of misconduct; and (3) to deter other licensees from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976). The purpose of licensing statutes is to protect the public by ensuring licensees possess a minimal level of professional competence. *Stringez v. Dep't of Regulation & Licensing Dentistry Examining Bd.*, 103 Wis. 2d 281, 286–87, 307 N.W.2d 664 (1981). The license allows the public to trust that the licensee is subject to rules and requirements that guarantee competence and impose accountability for substandard practice or misdeeds.

The Division recommends revocation of Respondent's real estate salesperson license. Based on the facts of this case and the purposes of discipline articulated in *Aldrich*, I conclude that revocation is appropriate and I adopt the arguments set forth in the Division's briefs.

Respondent's history of theft and deception demonstrates that he presents an unacceptably high risk to public safety and cannot be rehabilitated. It will also deter others from engaging in similar conduct. Revocation is necessary because the Board cannot ensure the public that Respondent can competently engage in the practice of real estate. *See Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984) (revocation is appropriate when the Board cannot assure the public of the licensee's competence to practice his profession). Respondent committed a federal felony based upon his involvement in an arson for profit scheme. He conspired with others to destroy a commercial building, submitted to the insurance company false proof of loss statements totaling approximately \$44,250 and lied to federal agents to avoid punishment for his involvement in the arson scheme. The business of real estate is the exchange of property for money, and Respondent's acts show he cannot be trusted with either.

Respondent also has a history of abusing client funds. The Board disciplined him in 2012 based upon the Wisconsin Supreme Court's finding that he had committed 21 counts of misconduct involving misuse of client funds in his role as an attorney. The Court suspended Respondent's law license for two years and emphasized “[t]he gravity of [his] violations, the repetitive nature of his misconduct, and his pattern of deception.” *Goldstein*, 2010 WI 26, ¶ 29, 323 Wis. 2d 706, 782 N.W.2d 388.

The Wisconsin Real Estate Examining Board, rather than revoking Respondent's license, attempted to rehabilitate him. It issued a reprimand and imposed strict license limitations, which

included, among other things, a prohibition against holding client funds and submission of quarterly reports from his supervisor. These limitations were, however, insufficient to prevent Respondent from committing further violations. Significantly, Respondent was still under Board supervision when he committed the acts underlying his felony conviction by lying to federal agents. On October 27, 2014, the Board removed the limitations and reinstated Respondent's license in full. Approximately one month later, on December 1, 2014, Respondent pled guilty to the federal felony at issue in this case. Revocation is necessary because Respondent cannot be rehabilitated.

Revocation is also necessary because Respondent poses an unacceptable threat to public safety. In fact, upon learning of Respondent's conviction, the Board summarily suspended his license pending the outcome of this case. It found an immediate suspension was imperatively required to protect the public health, safety and welfare. This is because Respondent's acts show he is dishonest, does not respect property rights and cannot be trusted to act in his clients' interests rather than his own. Respondent also cannot be trusted to work in an environment where client funds are held. Even if he does not have direct access to client funds, he would likely work with people who do and would be in a position to yet again participate in a scheme to defraud others.

The Board has already tried and failed to rehabilitate Respondent. There is no reason to believe that another form of discipline would be sufficient to protect the public. Further, revocation would send a strong message to others in the profession that the Board will not tolerate such conduct and would deter others from engaging in similar conduct.

Respondent agrees that, were it not for mitigating factors, license revocation would "ordinarily" be warranted for the violation at issue here. In the instant case, however, Respondent requests a one-year suspension rather than a revocation of his license. Respondent argues that it is "undisputed" that he only participated in the arson scheme which led to his conviction because of threats to his life and the lives of his family. However, the Division does in fact dispute Respondent's claim, and Respondent has failed to provide any evidence, in the form of affidavit, testimony, or otherwise, to support a finding that any of his asserted mitigating factors actually exist. Notably, the stipulation merely states, "Respondent's *position* is that his participation in the conduct underlying his conviction was procured over his objection through threats of physical injury to himself and his family by the individual who initiated the arson for profit scheme" (emphasis added).

Respondent had ample opportunity to submit supporting evidence. During the prehearing conference and a subsequent status conference, the parties specifically discussed whether the issue of discipline could be resolved by briefing or whether Respondent wished to call witnesses at a hearing. Respondent agreed to waive the hearing and to address discipline by briefing. He stated he planned to submit affidavit(s) in lieu of witness testimony. By Briefing Order dated April 27, 2015, the ALJ ordered Respondent to file any affidavit by no later than May 11, 2015. Respondent chose not to submit an affidavit. He thereby chose not to submit any evidence in support of the mitigating factors he now raises. Further, Respondent has not explained who threatened him, in what way he was threatened, why he believed the threat was serious or what

his response was. Because there is no evidence upon which a finding of mitigating factors may be made, they cannot be considered.

Respondent also argues his acts should be privileged by the defense of others. Again, there is no evidence to support a finding that he was acting in defense of others. Moreover, this is an improper collateral attack on his conviction. Defense of others, as set forth in Wis. Stat. § 939.48(4), is a potential defense to criminal liability and should have been raised during the criminal proceedings. If Respondent wished to challenge his conviction, he could have appealed it. However, this is not the proper forum for such a challenge.

A one-year suspension is insufficient to achieve the purposes of discipline set forth in *Aldrich*. Respondent has engaged in a pattern of theft and deception that was not altered by the Board's prior disciplinary order. He squandered his opportunity to show that he can be rehabilitated and has instead demonstrated that revocation of his license is necessary to protect the public from his extensive and serious misconduct.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors to consider include: (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 prosecutor; (4) the cooperation of the respondent; (5) any prior discipline; and (6) the fact that the Department is a program revenue agency, funded by other licensees. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz*, Order No. LS 0802183 CHI (Aug. 14, 2008).

Based on the factors delineated in the *Buenzli-Fritz* decision and the facts of this case, Respondent should be assessed all of the recoverable costs. Although Respondent has cooperated in these proceedings, including entering into a stipulation of facts and admitting the violations alleged, this mitigating factor is outweighed by the aggravating circumstances in this case. The Division has proven all counts charged. Respondent's misconduct, a federal felony, is extremely serious, as is reflected in the discipline sought by the Division. Respondent has prior discipline from the Board and from the Office of Lawyer Regulation and Wisconsin Supreme Court, and he committed the federal felony at issue in this case while under Board supervision. Finally, as a program revenue agency, the Department is funded entirely by the fees it collects. The expenses of responding to Respondent's violation should not be distributed among others in his profession. Instead, Respondent should be required to pay the costs of his proceeding.

CONCLUSIONS OF LAW

1. Respondent violated Wis. Admin. Code § REEB 24.17(1) by violating a law the circumstances of which substantially relate to the practice of a real estate salesperson.

2. Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(k), (L) and (p), respectively, because he is guilty of conduct which constitutes improper, fraudulent or dishonest dealing; violated a provision of Chapter 452 of the Wisconsin Statutes and an administrative rule

promulgated under that chapter, and was convicted of a felony that is a bar to licensure or registration under Wis. Stat. § 452.25(1)(a).

3. Based on the facts of this case and the criteria in *Aldrich*, revocation of Respondent's real estate salesperson license is warranted.

4. Based on the facts of this case and the criteria of *Buenzli-Fritz*, imposition of full costs of these proceedings on Respondent is warranted.

ORDER

For the reasons set forth above, IT IS ORDERED that:

1. Respondent's real estate salesperson license is revoked.

2. Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, payment shall be made by certified check or money order payable to the Wisconsin Department of Safety and Professional Services and sent to:

Department Monitor
Department of Safety and Professional Services
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

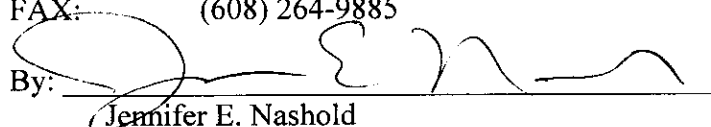
3. The terms of this Order are effective the date the Final Decision and Order is signed by the Board.

4. IT IS FURTHER ORDERED that the above-captioned matter is hereby closed as to Respondent Harvey J. Goldstein.

Dated at Madison, Wisconsin on August 5, 2015.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Telephone: (608) 266-7709
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By: _____


Jennifer E. Nashold
Administrative Law Judge