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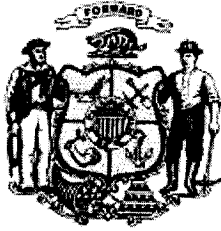
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**Before the
State of Wisconsin
Real Estate Examining Board**

In the Matter of Disciplinary Proceedings Against
Casey J. Ehler, Respondent

FINAL DECISION AND ORDER

Order No. 0004756

Division of Legal Services and Compliance Case No. 13 REB 127

On June 9, 2016, the State of Wisconsin, Real Estate Examining Board, delegated authority to Department of Safety and Professional Services Chief Legal Counsel Michael Berndt to review and decide this matter. Chief Legal Counsel Berndt, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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 to petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated at Madison, Wisconsin on the 10th day of June, 2016.

Michael Berndt, Chief Legal Counsel
Department of Safety and Professional
Services for the Real Estate Examining
Board



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Disciplinary Proceedings Against
Casey J. Ehler, Respondent

DHA Case No. SPS-15-0085
DLSC Case No. 13 REB 127

PROPOSED DECISION AND ORDER

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

Casey J. Ehler, by

Attorney Joseph A. Abruzzo
Lichtsinn & Haensel, S.C.
111 East Wisconsin Avenue, #1800
Milwaukee, WI 53202

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 October 6, 2015, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served a formal Notice of Hearing and Complaint against Respondent Casey J. Ehler (Respondent). The Complaint alleged that 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 broker, and violated Wis. Stat. § 452.09(1)(c) by failing to include in her license application all information the Wisconsin Real Estate Examining Board (Board) reasonably

required to enable it to determine her competency to transact the business of a broker in a manner that safeguards the interests of the public.

On October 26, 2015, counsel for Respondent filed an Answer to the Division's Complaint. A telephone prehearing conference was held on November 6, 2015 at which the parties agreed to a briefing schedule on a motion for summary judgment which the Division intended to file. Consistent with a November 6, 2015 Briefing Order, on December 7, 2015, the Division filed a motion for summary judgment. Counsel for Respondent failed to file a response. On February 19, 2016, the administrative law judge (ALJ) issued a Summary Judgment Order granting summary judgment to the Division with respect to whether Respondent engaged in the violations alleged. The ALJ's Summary Judgment Order required the parties to submit written arguments on the remaining issues of discipline and costs no later than March 31, 2016, unless Respondent indicated in writing by March 1, 2016 that she preferred a hearing on these issues. Counsel for Respondent did not request a hearing on the issues of discipline and costs and failed to file a submission with respect to these issues.

UNDISPUTED MATERIAL FACTS

The following undisputed material facts were set forth in the ALJ's February 19, 2016 Summary Judgment Order and are repeated here for ease of reference.

1. Respondent is licensed in the State of Wisconsin as a Real Estate Broker, having license number 56971-90, first issued on July 6, 2012, and current through December 14, 2016. (Complaint, ¶ 1; Answer, ¶1)

2. On November 8, 2010, Respondent was charged with Theft Over \$10,000 – Theft by Deception, a Class 2 felony, in the Circuit Court for the Fifth Judicial Circuit of Illinois, Case Number 2010-CF-620. (Complaint, ¶ 3; Answer, ¶ 3; Exhibit A attached to the Division of Legal Services and Compliance's Memorandum in Support of Its Motion for Summary Judgment (Div. Ex. A); Div. Ex. B, p. 2)

3. On or about June 27, 2012, Respondent submitted an application for a real estate broker license to the Department. (Complaint, ¶ 4; Answer, ¶ 4; Affidavit of Carmell Listenbee in Support of the Division's Motion for Summary Judgment attached to the Division of Legal Services and Compliance's Memorandum in Support of Its Motion for Summary Judgment (Listenbee Aff.) at Exhibit 1)

4. On her application, Respondent answered "no" to the following question:

Have you ever been convicted of a misdemeanor or a felony, or driving while intoxicated (DWI), in this or any other state, **OR** are criminal charges or DWI charges currently pending against you?

(Complaint, ¶ 5; Answer, ¶ 5; Listenbee Aff. at Ex. 1, p. 2)

5. Respondent also certified on the application, in a notarized statement, that all answers on the application were strictly true. (Listenbee Aff. at Ex. 1, p. 11)

6. On or about June 5, 2013, the Illinois State's Attorney amended the criminal Information in Case Number 2010-CF-620. The charge of Theft Over \$10,000 – Theft by Deception was replaced with a charge of Home Repair Fraud in violation of 815 ILCS 515/3(a)(1), a Class 3 felony. (Complaint, ¶ 6; Answer ¶ 6; Div. Ex. B, pp. 6-8).

7. The Amended Information, upon which Respondent's conviction was based, alleged that Respondent "knowingly entered into a written agreement in the amount of \$35,000.00 with Dave V. Ludwig for the repair of the home of Dave V. Ludwig . . . and in so doing, knowingly promised performance of the contract which he [*sic*] did not intend to perform or knew would not be performed, in violation of 815 ILCS 515/3(a)(1)." (Div. Ex. B, p. 7)

8. On July 18, 2013, Respondent was convicted by guilty plea of Home Repair Fraud in violation of 815 ILCS 515/3(a)(1), a Class 3 felony. (Complaint, ¶ 7; Answer, 7; Ex. B, p. 12)

9. An Order of Probation was filed on September 11, 2013. Ex. B, pp. 9-11) The Order of Probation ordered Respondent to complete 30 months of probation, the terms of which included payment of restitution in the amount of \$35,000 and counseling for "deceptive behavior." (Div. Ex. B, pp. 9-11)

10. Based on Findings of Fact 2-6, it is clear that the Theft Over \$10,000 – Theft by Deception felony charge was pending against Respondent in Illinois on or about June 27, 2012, when Respondent submitted her application to the Board.

DISCUSSION AND CONCLUSIONS OF LAW

Violations and Discipline

As stated in the February 19, 2016 Summary Judgment Order, Respondent is subject to discipline for violating Wis. Stat. §§ 452.09(1)(e) and 452.14(3)(a) and (L) by failing to submit the information on her application which the Department reasonably required and by instead submitting false information. As a result of these violations, the Division requests that Respondent's real estate broker license be revoked. Based on the law and facts of this case, revocation is appropriate.

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).

With respect to the protection of the public, the undisputed facts show that Respondent was charged with theft Over \$10,000 – Theft by Deception on November 8, 2010. While this felony charge was pending, Respondent applied for and was granted a real estate broker license. On her application, she falsely certified that she had no criminal charges pending against her in

Wisconsin or any other state. After Respondent was issued her real estate broker license, she was convicted of Home Repair Fraud, a Class 3 felony, on July 18, 2013.

Revocation is necessary to protect the public from other instances of misconduct by Respondent. Respondent has already defrauded a homeowner of \$35,000 in a previous real estate transaction, and, as stated in the Summary Judgment Order, “Respondent’s real estate practice allows her ample opportunity to engage in similar behavior, as the practice of real estate involves meeting with clients, drafting contracts, handling client funds and giving clients advice about their real estate transactions, including the financial aspects of the transactions.” *Id.* at pp. 4-5. Repeat deceitful behavior could cause significant financial harm to future clients. The purpose of requiring real estate brokers to be licensed is to ensure the public that the licensee can be trusted to perform these responsibilities honestly and competently. Respondent’s dishonesty with a client and with the Board demonstrates she cannot be trusted. In fact, had the Board known about Respondent’s pending charge of Theft Over \$10,000 – Theft by Deception, it may have chose not to grant her license in the first place.

Further, by lying to the Board to conceal the pending charge when she applied for her real estate broker license, Respondent has demonstrated that she does not respect the Board’s authority or rules of her profession. Respondent’s lack of accountability was further demonstrated in this proceeding, in which Respondent did not participate in any meaningful way, failing to file a response to the Division’s motion for summary judgment, and failing to submit any argument with regard to the issues of discipline and costs. As a result of her conduct, Respondent has shown that she would pose a threat to the public if allowed to practice as a real estate broker.

Moreover, Respondent’s rehabilitation is unlikely as Respondent’s actions show a disregard for honest dealings, a lack of respect for the property rights of others, and an absence of accountability for her conduct. Notably, Respondent has failed to present any mitigating argument as to why she should be trusted to practice as a real estate broker or why revocation should not be imposed. Her lack of participation in these proceedings shows indifference toward her profession and toward any efforts at rehabilitation.

Revocation is also necessary to deter others licenses from engaging in similar conduct. Deterrence is particularly important in cases involving felony convictions which, like Respondent’s, are substantially related to the practice of a real estate broker. The financial harm that can result from behavior such as Respondent’s is not only damaging to clients but is also detrimental to the reputation of the profession as a whole. Licensees should be aware that they cannot expect to continue to work in the real estate profession after being convicted of a felony such as that committed by Respondent.

Finally, revocation of Respondent’s license is consistent with the prior Board decision issued in *In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein*, Order 0003769 (Oct. 15, 2015), in which the Board revoked Mr. Goldstein’s license for a felony conviction which was substantially related to the practice of a real estate salesperson.

For all of the reasons stated above, and with no argument advanced to the contrary, revocation of Respondent's real estate broker license is warranted.

Costs

The Division has the authority to assess costs pursuant to Wis. Stat. § 440.22. With respect to imposition of costs, factors which may be considered 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* (LS 0802183 CHI) (Aug. 14, 2008). It is within the Board's discretion as to which, if any, of these factors to consider, whether other factors should be considered, and how much weight to give any factors considered.

In the instant case, the Division has proven all counts charged. In addition, Respondent's misconduct is extremely serious, as she committed a felony offense which was substantially related to her practice as a real estate broker and lied to conceal the pending felony charges on her real estate broker application. As a result, the Division is seeking, and has been granted, revocation of Respondent's license, the highest level of discipline available in these proceedings. Moreover, as stated, Respondent did not cooperate fully in these proceedings, as she failed to provide a response to the Division's motion for summary judgment as required by the ALJ's November 6, 2015 Briefing Order and did not submit a response as required in the ALJ's February 19, 2016 Summary Judgment Order. Finally, fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding resulting from her own misconduct, rather than spreading the costs among members of the real estate profession who have not engaged in such misconduct.

ORDER

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

1. Respondent's license to practice as a real estate broker 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. The above-captioned matter is hereby closed as to Respondent Casey J. Ehler.

Dated at Madison, Wisconsin on April 14, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Telephone: (608) 266-7709
FAX: (608) 264-9885

By: 

Jennifer E. Nashold

Administrative Law Judge