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

In the Matter of Disciplinary Proceedings Against
Mike Mendez, Respondent

FINAL DECISION AND ORDER

Order No. 0004882

Division of Legal Services and Compliance Case No. 14 REB 021

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 18 day of August, 2016.

A handwritten signature in cursive script, likely belonging to a member of the Real Estate Examining Board.

Member
Real Estate Examining Board



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

In the Matter of Disciplinary Proceedings Against
Mike Mendez, Respondent

DHA Case No. SPS-16-0038
DLSC Case No. 14 REB 021

PROPOSED DECISION AND ORDER

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

Mike Mendez
2120 S. 14th Street
Milwaukee, WI 53215

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 Renee M. Parton
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 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a formal Notice of Hearing and Complaint against Respondent Mike Mendez (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 452.14(3)(L) because Respondent: (1) violated Wis. Admin. Code § REEB 15.04 by failing to make trust account records and other documents available for inspection and copying by the Board; and (2) violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to the Department and the Board regarding a request for information within 30 days of the date of the request.

The Division served Respondent on April 18, 2016, by sending a copy of the Notice of Hearing and Complaint to his address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent failed to file an Answer to the Complaint, as required by Wis. Admin. Code § SPS 2.09(4), and failed to appear at the telephone prehearing conference held before the Division of Hearings and Appeals on May 23, 2016.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Complaint and failure to appear for the prehearing conference, the undersigned Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on May 23, 2016. Consistent with the notice, the Division filed a recommended proposed decision and order.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-9 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Mike Mendez is licensed by the State of Wisconsin to practice as a Real Estate Broker, having license number 52640-90, first issued on January 2, 2005, and current through December 14, 2016.

2. Respondent's most recent address on file with the Department is 2120 South 14th Street, Milwaukee, Wisconsin 53215.

3. On February 18, 2014, the Department received a complaint that alleged Respondent had failed to timely return earnest money from a failed real estate transaction.

4. On April 4, 2014, Respondent disbursed earnest money to a prospective buyer without getting a signed release from the prospective seller.

5. On April 17, 2014, the Division opened this matter for investigation.

6. On May 9, 2014, the Department auditor scheduled an appointment with Respondent to audit his real estate trust account on May 29, 2014.

7. On May 29, 2014, Respondent failed to appear for the scheduled audit appointment.

8. On March 2, 2015, an investigator with the Department sent an email to Respondent's email of record requesting Respondent provide evidence that he is maintaining a bookkeeping system for his realty business pursuant to Wis. Admin. Code § REEB 18.13.

9. Respondent failed to respond to the Department's request.

Facts Related to Default

10. The Complaint and Notice of Hearing in this matter were served on Respondent on April 18, 2016, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed Respondent: “If you do not provide a proper Answer within 20 days, you will be found to be in default, and a default judgment may be entered against you on the basis of the Complaint and other evidence. In addition, the Department may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further notice or hearing.”

11. Respondent failed to file an Answer as required by Wis. Admin. Code § SPS 2.09(4).

12. Following expiration of the 20-day time period to file an Answer, ALJ scheduled a prehearing conference for May 23, 2016 at 10:00 am. Notice of this prehearing conference was sent to both parties, with instructions that Respondent provide to the ALJ a telephone number at which he could be reached for the conference no later than May 18, 2016. Respondent failed to provide a telephone number.

13. At the prehearing conference held on Monday, May 23, 2016, the Division provided a telephone number for Respondent, whereupon the ALJ left a voicemail for Respondent indicating that Respondent should contact the ALJ at the telephone number provided, failing which the ALJ would proceed with the conference without Respondent. However, as of the date of this decision, Respondent has not contacted the ALJ at the telephone number provided by the ALJ.

14. On May 23, 2016, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than June 13, 2016, a recommended proposed decision and order.

15. The Division timely filed its recommended proposed decision and order.

16. Respondent did not file a response to either the Notice of Default and Order or to the Division’s submission.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the May 23, 2016 Amended Notice of Default and Order, Respondent is in default for failing to file an Answer to the Complaint and failing to appear at the telephone conferences held on May 23, 2016. *See* Wis. Admin. Code §§ SPS § 2.09(4) and 2.14; Wis. Admin. Code § HA 1.07(3). Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3).

Violations of Wis. Admin. Code §§ REEB 15.04 and 24.17(5)

The Division alleges that Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(L), which grants the Board the authority to discipline any license or license holder for violating any provision of the Real Estate Examining Board chapter or any rule promulgated under the Real Estate Examining Board chapter.

Wisconsin Admin. Code § REEB 15.04 states, in relevant part:

Retention of records. A broker shall retain for at least 3 years exact and complete copies of all listing contracts, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence received or prepared by the broker in connection with any transaction. . . . The broker shall make these records available for inspection and copying by the board. If the records are retained outside this state, the broker shall, upon request of the board, promptly send exact and complete copies to the department.

Wisconsin Admin. Code § REEB 24.17(5) states that “[l]icensees... shall respond to the department and the board regarding any request for information within 30 days of the date of the request.”

The undisputed facts establish that on May 9, 2014 the Department auditor scheduled an appointment with Respondent to audit his real estate trust account. The appointment was scheduled for May 29, 2014. Respondent did not appear for the audit at the scheduled time. On March 2, 2015, the Department requested information from Respondent regarding his failure to show up for the audit and verifying he is maintaining a bookkeeping system for his brokerage services. Respondent did not respond to this request.

Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent violated Wis. Admin. Code §§ REEB 15.04 and 24.17(5). As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(L).

Appropriate Discipline

The three purposes of discipline are: (1) to promote the rehabilitation of the credential holder; (2) to protect the public from other instances of misconduct; and (3) to deter other credential holders from engaging in similar conduct. *State v. Aldrich*, 71 Wis. 2d 206, 237 N.W.2d 689 (1976).

The Division recommends that Respondent’s real estate broker license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. “Protection of the public is the purpose of requiring a license.” *State ex rel. Green v. Clark*, 235 Wis. 628, 631, 294 N.W. 25 (1940). When a license is granted to an individual, Wisconsin is assuring the public that the licensed individual is competent in his or her profession. *Stringez v.*

Dep't of Regulation & Licensing Dentistry Examining Bd., 103 Wis. 2d 281, 287, 307 N.W.2d 664 (1981). It follows that if the state cannot assure the public of the licensee's competence to practice the profession, then revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Respondent has been uncooperative throughout the Department's investigation and in this proceeding. Thus, the Board cannot assure the public of Respondent's competency or that he is fit to be a real estate broker. Therefore, revocation of Respondent's license is an appropriate response to his disrespect for the law, the public welfare, and the licensing authority governing his profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely in this case, as Respondent refused to cooperate with the Board which granted his license. Having obtained no information from Respondent, the Board cannot ascertain whether rehabilitative measures might be effective. Moreover, revocation in this case sends a strong message to licensees that refusing to cooperate with the Board's investigation of complaints is not an option.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's real estate broker license is warranted.

Costs

As a result of Respondent's license being revoked by the Board, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondent. *See* Wis. Stat. § 440.22(2). In exercising such discretion, the Department must look at aggravating and mitigating facts of the case; it may not assess costs against a licensee based solely on a "rigid rule or invocation of an omnipresent policy," such as preventing those costs from being passed on to others. *Noesen v. State Department of Regulation & Licensing, Pharmacy Examining Board*, 2008 WI App 52, ¶¶ 30-32, 311 Wis. 2d. 237, 751 N.W.2d 385. The Board has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against Respondent. *See In the Matter of Disciplinary Proceedings against Elizabeth Buenzli-Fritz* (LS0802183 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.

Particularly relevant in the instant matter are the following facts. First, the Division proved every count it alleged. This is not a case where the Division wasted resources or incurred additional costs by alleging multiple counts and then failing to prove those counts. Second, Respondent's conduct and violations are serious. Respondent did not cooperate with the Department's investigation or with the hearing proceedings. As a result, the Division sought, and was granted, a revocation of Respondent's license to practice real estate in Wisconsin, the most severe form of discipline available. Third, Respondent made no argument concerning whether costs should be assessed against him. When Respondent fails to argue a position, the Division is not obliged to make the argument for him. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. As such,

fairness weighs heavily in favor of requiring Respondent to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all real estate licensees in Wisconsin.

In view of the foregoing, the full costs of this proceeding shall be assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

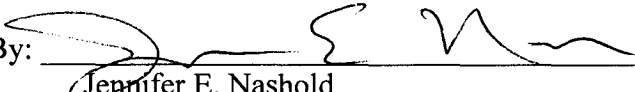
ORDER

Accordingly, it is hereby ORDERED that Respondent Mike Mendez's real estate broker license (no. 52640-90) is REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondent ever apply for a credential with the Department in the future, Respondent shall pay all recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18, prior to the Department's consideration of any such application.

Dated at Madison, Wisconsin on June 23, 2016.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
5005 University Avenue, Suite 201
Madison, Wisconsin 53705
Tel. (608) 266-7709
Fax (608) 264-9885

By: 
Jennifer E. Nashold
Administrative Law Judge