

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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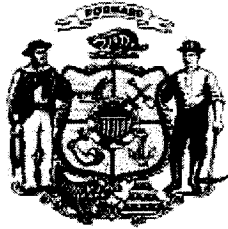
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**Before the  
State of Wisconsin  
Real Estate Examining Board**

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In the Matter of Disciplinary Proceedings Against  
Julia Luna, Respondent

FINAL DECISION AND ORDER

Order No. 0005058

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**Division of Legal Services and Compliance Case No. 14 REB 108**

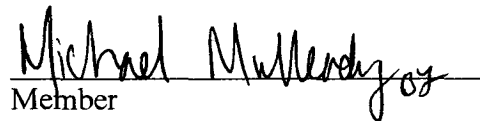
The State of Wisconsin, Real Estate Examining Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

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 2nd day of December, 2016.

  
Member  
Real Estate Examining Board



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

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In the Matter of Disciplinary Proceedings Against  
Julia Luna, Respondent

DHA Case No. SPS-16-0020  
DLSC Case No. 14 REB 108

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**PROPOSED DECISION AND ORDER**

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

Julia Luna  
P.O. Box 1473  
Milwaukee, WI 53201-1473

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 Sarah Norberg  
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 February 12, 2016, when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), served its Complaint on Respondent Julia Luna (Luna). The Complaint alleged that Luna was subject to discipline for failing to respond to the Department's request for information and for failing to make trust account records and other documents available to the Department's auditor upon request. Prehearing conferences were held in this matter on March 17, April 22 and June 2, 2016. A hearing was held on August 17, 2016, after which a transcript was filed.

## FINDINGS OF FACT

1. Respondent Julia Luna is licensed in the State of Wisconsin as a real estate broker, having license number 52773-90, first issued on February 9, 2005, and current through December 14, 2016. (Complaint, ¶ 1; undisputed in Luna's Answer)

2. Joseph Vosen (Vosen) is an auditor with the Department. In preparation for an audit trip to Milwaukee County, Vosen was pulling information from his database when a trust account came up under the name of Luna Realty, LLC. In examining records for Luna Realty, he observed that the business entity license for Luna Realty had expired; however, the trust account had not been closed. (Hrg. Tr., pp. 10-11)

3. On January 2, 2014, Vosen sent an email to Luna, requesting information regarding an open trust account under Luna Realty despite the fact that her real estate business entity license had expired on December 14, 2012. (Div. Ex. 2; Hrg. Tr., p. 13)

4. Luna did not respond Vosen's January 2, 2014 email. (Hrg. Tr., p. 13)

5. On January 17, 2014, Vosen left a voicemail message at Luna's telephone number on record with the Department, requesting that Luna return the call. (Hrg. Tr., p. 13)

6. Luna did not respond to Vosen's January 17, 2014 voicemail message. (*Id.*)

7. On January 22, 2014, Vosen again called Luna and spoke with her regarding the trust account. Luna stated she was still operating her business and verified her email address on file with the Department. Vosen emailed Luna a link to the online renewal form and a pre-audit questionnaire pertaining to the trust account. (Div. Exs. 3, 4; 6; Hrg. Tr., pp. 13-14)

8. On March 11, 2014, Vosen stopped by the address that was then on file with the Department for Luna Realty. Vosen was advised by a neighbor that Luna had vacated the office located at that address. Vosen then called Luna and left a voicemail message, asking her to return the pre-audit questionnaire. (Div. Ex. 6; Hrg. Tr., pp. 14-15)

9. Luna did not respond to Vosen's March 11, 2014 voicemail message and did not provide the pre-audit questionnaire. (Hrg. Tr., pp. 14-15)

10. On March 20, 2014, Vosen left a voicemail message at Luna's telephone number, requesting that Luna return the call. (Div. Ex. 6; Hrg. Tr., p. 15)

11. Luna did not respond to Vosen's March 20, 2014 voicemail message. (Div. Ex. 6; Hrg. Tr., p. 15)

12. On July 25, 2014, Vosen left a voicemail at Luna's telephone number, advising Luna that a complaint would be filed if the completed pre-audit questionnaire was not received. (Div. Ex. 6; Hrg., Tr., 16)

13. On July 28, 2014, Luna returned Vosen's telephone call and left a message, stating that she would return the pre-audit questionnaire but not stating when she would do so. (Div. Ex. 6; Hrg. Tr., p. 16)

14. On August 15, 2014, Vosen left another voicemail message at Luna's telephone number, advising Luna that the completed pre-audit questionnaire had still not been received by the Department. (*Id.*)

15. Luna failed to respond to Vosen's August 15, 2014 voicemail message. (*Id.*)

16. On September 2, 2014, the Division opened this case, Case Number 14 REB 108, for investigation of alleged trust account violations and Luna's failure to respond to the auditor's requests for information.

17. On September 3, October 8, and October 22, 2014, Doug Austin (Austin), an investigator with the Department, sent emails to Luna, asking her to provide the information Vosen had requested. The emails informed Luna that she had a duty to cooperate with the Real Estate Examining Board (Board) and Department under Wis. Admin. Code § REEB 24.17, and that failure to respond could result in discipline, including revocation of her license. (Div. Ex. 17)

18. On October 15 and October 22, 2014, Austin left voicemail messages for Luna, advising her that any further lack of cooperation would be considered in a possible disciplinary action. (*Id.*)

19. The only response from Luna was on October 9, 2014, when she stated that she would provide the information to the Department as requested. (*Id.*)

20. As of the date of the Division's Complaint in this matter, February 11, 2016, no documentation had been received by the Department, and Luna had made no additional contact with the Department. (Complaint, ¶ 20, undisputed in Luna's Answer)

21. A prehearing conference was first held in this matter before the undersigned administrative law judge on March 17, 2016.

22. In March of 2016, Luna provided some documentation to the Department. The documents provided were not the documents requested and were not sufficient for Vosen to conduct an audit of Luna's trust account. Although Vosen received a journal and bank statements, he did not receive a trial balance, which is an itemized listing of all of the money being held at the end of the month, or ledgers, which document the deposits and withdrawals for each individual real estate transaction. Also, the bank statements had not been reconciled. Vosen testified that the missing information was required to be maintained under Wis. Admin. Code § REEB 18.13. (Hrg. Tr., pp. 17-18)

23. In her Answer to the Complaint filed on April 1, 2016, Luna stated that during the time frame of 2013-15, she was experiencing several different personal hardships, some of which

she explained, which required a lot of her attention and caused her to be distracted and overwhelmed. She also stated that she knew she needed to improve with respect to business-related issues, that she was very limited in her use of technology, including email, telephones and her website. She further explained that she broke or lost her telephone often, has never been good about voicemail or emails, had issues with being distracted and disorganized, and had missed renewal dates for her license. She stated that her delays in responding to the Department were not intentional, that 2016 was a much better year, and that she would do her best to stay on top of all requests going forward. (Answer to Complaint; Hrg. Tr., pp. 25-26)

24. In an email sent to Division counsel the morning of the August 17, 2016 hearing, Luna apologized for not contacting the Department sooner. She also stated that she had misplaced trust checkbooks and therefore had to use generic, over-the-counter bank checks, that she would be willing to take any class pertaining to trust account record keeping and would agree to submit monthly accountability documents, but that she could not go years into the past to organize the requested materials in an appropriate manner. (Div. Ex. 18; Hrg. Tr., p. 26)

25. At hearing, Luna admitted the violations alleged. She testified that she wished to maintain her real estate broker's license, that she is "not good" with respect to trust accounts and would accept a license limitation prohibiting her from any involvement with trust accounts, that she knows she needs to improve in communication and record keeping, that she is good at sales and making sure the money goes where it is supposed to go, that she has never acted in an unethical manner, and that she believes revocation of her license would be a too severe of a penalty for her violations. (Hrg. Tr., pp. 24-32, 47-50, 54-59)

## DISCUSSION

### Violations

Luna has admitted the violations alleged in this matter. The violations are failing to respond to the Department's request for information, contrary to Wis. Stat. § 440.20(5)<sup>1</sup> and Wis. Admin. Code § REEB 24.17(5);<sup>2</sup> and failing to make trust account records and other documents

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<sup>1</sup> Wisconsin Stat. § 440.20(5) states:

(5) . . . [T]he department, or the appropriate credentialing board or other board in the department, may reprimand a credential holder, or may deny, limit, suspend, or revoke a credential, if the credential holder fails to respond, to the satisfaction of the department, credentialing board, or other board in the department, within 30 days to a request for information from the department, credentialing board, or other board in the department in connection with an investigation of alleged misconduct of the credential holder.

<sup>2</sup> Wisconsin Admin. Code § REEB 24.17(5) states: "(5) DUTY TO COOPERATE WITH THE BOARD AND THE DEPARTMENT. Licensees and applicants shall respond to the department and the board regarding any request for information within 30 days of the date of the request."

available to the Department's auditor on request, contrary to Wis. Admin. Code § REEB 15.04.<sup>3</sup> As a result of these violations, she is subject to discipline pursuant to Wis. Stat. §§ 440.20(5) and 452.14(3)(L).<sup>4</sup> The question in this case centers on what discipline should be imposed.

### 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 Division seeks revocation of Luna's real estate broker's license. In support of such discipline, the Division emphasizes the following facts. First, Luna failed to comply with the Department's request for information on numerous occasions, over a long period of time. She ignored Vosen's requests for information on no less than eight occasions and Austin's requests on no less than five occasions. This refusal to provide information took place over the course of approximately two years, beginning in January 2, 2014. Luna's contact during that time period was minimal, primarily consisting of telling the Department she would provide the information and then failing to do so. Although Luna stated that she believes she did fax the requested questionnaire to the Department at some point, the Division proved by a preponderance of the evidence that the Department never received the questionnaire or other documentation, despite its repeated requests and despite Luna being warned that her license was in danger. Luna only provided documentation in March of 2016, after the Division filed its Complaint and proceedings were initiated before this tribunal. The Division also emphasizes Luna's admitted disorganization and deficiencies with respect to record-keeping and trust accounts.

Luna argues that revocation is too severe of a penalty for these failures. She admits that she is not good with trust accounts and other record keeping but that she has never harmed clients and makes sure money goes where it is supposed to go. She requests that she be allowed to keep her real estate broker's license but that limitations be imposed, such as not being allowed to have trust accounts. She states that her business, Luna Realty, has been her livelihood for 12 years, that clients know her business name and that it would be a financial hardship for her to employ a broker or work for a different real estate company.

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<sup>3</sup> Wisconsin Admin. Code § REEB 15.04 states:

**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 retention period shall run from the date of closing of the transaction or, if the transaction has not been consummated, from the date of listing. 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.

<sup>4</sup> Wisconsin Stat. § 452.14(3)(L) states: "(3) The board may revoke, suspend, or limit the license of any licensee, or reprimand the licensee, if it finds that the licensee has done any of the following: . . . (L) Violated any provision of this chapter or any rule promulgated under this chapter."

The Division responds that it has considered other options such as placing limitations on Luna's license but that no limitations would be sufficient to protect the public. The Division emphasizes that what distinguishes a real estate broker from a real estate salesperson is that a broker is allowed to handle money such as trust accounts, and that Luna has proven she cannot be trusted to perform such duties. The Division states that Luna had a real estate salesperson license but allowed that license to lapse. The Division states that real estate salespersons are legally required to work under a real estate broker, and suggests that Luna work toward reactivating her salesperson license so she may potentially continue to engage in real estate sales while ensuring that funds and records are handled by a responsible broker. The Division further notes that Luna should not be operating Luna Realty, as the license for that entity has expired.

Based on the record in this case and the factors set forth in *Aldrich*, I agree with the Division that revocation of Luna's real estate broker's license is required and that protection of the public will not be served through other means. Although it is commendable that Luna acknowledges she must improve her record-keeping and handling of trust accounts and agrees to limitations prohibiting her handling of trust accounts, the problem in this case is that there is no means to ensure that she would comply with any limitations imposed on her license. The record shows an extreme disregard for the Department and Board's legitimate authority with respect to her broker's license. This was not a case involving only a few untimely responses or failures to respond; rather, it involves years of ignoring the Department's request for information, even though she knew her license could be jeopardized. The record does not show that Luna has been or will be rehabilitated in this regard. As stated by the Division at hearing, regulations are in place so that the Board can assess competency and ensure safe services for the citizens of Wisconsin. With regard to real estate brokers in particular, the Department and Board have an obligation to ensure that client funds are adequately safeguarded. Although Luna testified that she serves clients in an appropriate and ethical manner; she acknowledges her substantial limitations in record-keeping, organization and trust accounts, which are a significant components of the real estate broker profession. Moreover, due to her lack of cooperation with the Department, there is no way for the Board or Department to verify Luna's assertions. Finally, I note that revocation best serves the objective of deterring other licensees from blatantly and repeatedly ignoring the Department's and Board's authority and their requests for information.

### 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, D.C.*, Order No. LS0802183CHI (Aug. 14, 2008). It is not mandatory that all or any of these factors be considered, and it is within the Board's discretion to determine what weight, if any, to give any factors considered.



The Division requests that Luna be required to pay the full costs of this proceeding. Based on the record in this case, it is appropriate to require Luna to pay 80 percent of the costs of this proceeding. The majority of costs should be imposed on her because the Division established all of the counts alleged, the violations were extensive and serious, and the level of discipline sought and imposed is the most severe available. In addition, the costs of this proceeding should not be borne by members of the real estate profession who have not engaged in such misconduct.

Operating in Luna's favor is the fact that she has no prior discipline and showed some level of cooperation in this proceeding once the Complaint was filed against her. She admitted the violations early on in the process, attended prehearing conferences and the hearing, and filed an Answer to the Complaint (albeit untimely). In addition, there is no allegation demonstrating a direct negative impact on any of Luna's clients and there is no reason to doubt the extenuating personal challenges she was facing during the relevant time period. However, because the factors in favor of imposing costs on Luna outweigh those against doing so, she should be responsible for 80 percent of the costs in this matter.

#### CONCLUSIONS OF LAW

1. By failing to respond to the Department request for information, Luna violated Wis. Stat. § 440.20(5) and Wis. Admin. Code § REEB 24.17(5).
2. By failing to make trust account records and other documents available to the Department's auditor on request, Luna violated Wis. Admin. Code § REEB 15.04.
3. As a result of her violations, Luna is subject to discipline pursuant to Wis. Stat. §§ 440.20(5) and 452.14(3)(L).
4. Under the facts of record and the criteria articulated in *Aldrich*, revocation of Luna's real estate broker's license is warranted.
5. Under the facts of this case and consistent with the factors set forth in *Buenzli-Fritz*, Luna is required to pay 80 percent of the costs of this proceeding.

#### ORDER

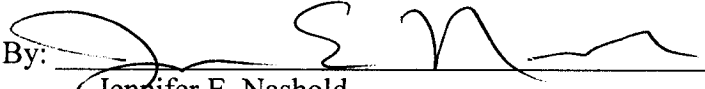
For the reasons set forth above, IT IS ORDERED that Julia Luna's license to practice as a real estate broker is REVOKED. In addition, Julia Luna shall pay 80 percent of recoverable costs in this matter in an amount to be established, pursuant to Wis. Admin. Code § SPS 2.18. After the amount is established, 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

IT IS ALSO ORDERED that the terms of this Order are effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on October 3, 2016.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
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By:   
Jennifer E. Nashold  
Administrative Law Judge