

## WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

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In the Matter of Disciplinary Proceedings Against  
Tiffany L. Harden, Respondent

FINAL DECISION AND ORDER

Order No. **0005613**

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**Division of Legal Services and Compliance Case No. 16 REB 026**

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 2nd day of February, 2018.

Robert Webster EK

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  
Tiffany L. Harden, Respondent

DHA Case No. SPS-17-0012  
DLSC Case No. 16 REB 026

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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:

Tiffany L. Harden  
2469B South 44th Street #4  
Milwaukee, WI 53219

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 Notice of Hearing and Complaint against Respondent. The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. § 452.14(3)(L) and (p) and Wis. Admin. Code § REEB 24.17(2) and (2m) because Respondent: (1) was convicted of a felony that is a bar to licensure under Wis. Stat. § 452.25(1); (2) 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 (3) violated Wis. Admin. Code § REEB 24.17(1) by failing to send to the Board, within 48 hours after judgment of conviction, a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction.

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The Division filed a motion for summary judgment on December 6, 2017, requesting that the three violations alleged be found as a matter of law and that the issues of discipline and costs be determined by further briefing. Respondent did not file a response to the Division's motion for summary judgment. On November 27, 2017, the undersigned administrative law judge (ALJ) granted the Division's motion for summary judgment with respect to all three violations. The ALJ's Summary Judgment Order also set a deadline of December 18, 2017 for the Division to file its written argument regarding what discipline and costs, if any, should be imposed, and a deadline of January 5, 2018 for Respondent to file her response. On December 8, 2017, the Division filed its brief on discipline and costs. On January 2, 2018, the Division of Hearings and Appeals received a two-sentence letter from Respondent dated December 26, 2017, stating that she disputed having to pay any costs related the proceedings but agreed to the Division's original offer to revoke her real estate license and not require her to pay costs.

### FINDINGS OF FACT<sup>1</sup>

1. Respondent is licensed by the State of Wisconsin as a real estate broker. Respondent's license was issued on March 4, 2010 and expired on December 15, 2016. (Complaint, ¶ 1; Answer, ¶ 1)

2. On July 31, 2014, Respondent pled guilty to and was convicted of three federal felonies, contained in Counts 1-3 of the Information filed against her: Mail Fraud, False Claims for Refund, and Food Stamp Fraud, respectively. (Judgment in a Criminal Case in *United States v. Harden*, 12-CR-176, attached to the Division's Motion for Summary Judgment as Exhibit C to Parton Affidavit (Ex. C); Information in *United States v. Harden*, 12-CR-176, attached to Division's Motion for Summary Judgment as Exhibit A to Parton Affidavit (Ex. A))

3. Respondent's plea agreement reflects that she admitted to the facts contained in Counts 1-3 of the Information. (Ex. A; Plea Agreement in *United States v. Harden*, 12-CR-176 attached to Division's Motion for Summary Judgment as Exhibit B to Parton Affidavit (Ex. B))

4. On or about January 2012 through on or about August 2012, Respondent knowingly devised and executed a scheme to defraud the Internal Revenue Service (IRS) and to obtain money by means of materially false and fraudulent pretenses, representations and omissions. (Ex. A, ¶ 7)

5. In executing this scheme, Respondent found individuals who were unemployed and/or receiving welfare benefits, as well as individuals who were not in school, and used their names and social security numbers to file false returns on their behalf. In some cases, Respondent contacted these individuals and offered to do their taxes. (Ex. A, ¶ 1; Ex. B, pp. 20-21)

6. Respondent created false W-2s, false information on dependent children, false employment histories and false statements as to the education of the individual filers in order to make it appear that they were eligible for a refund, when in fact, Respondent knew that they were not. (Ex. A, ¶ 6)

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<sup>1</sup> The Findings of Fact are taken from the November 27, 2017 summary Judgment Order issued in this matter.

7. Respondent filed returns that included inflated or fictitious wages, false federal tax withholdings, non-existent dependents, and/or claims for credits for college expenses not incurred. (Ex. A, ¶ 1)

8. As a result, Respondent obtained IRS tax refunds for the individual filers, either as deposits into her personal bank accounts or by having checks endorsed and given to her. In doing so, Respondent fraudulently obtained \$120,125 in tax refunds to which she was not entitled. (Ex. A, ¶ 7)

9. Many of the individuals for whom Respondent filed fraudulent returns were unaware of Respondent's activities, as Respondent neither informed them nor provided them with a copy of the filed returns. (Ex. A, ¶ 1)

10. To facilitate the scheme, Respondent used a Post Office (P.O.) Box at the Juneau Station in Milwaukee, Wisconsin, which Respondent opened on or about September 14, 2011. Respondent added the names of several adults to her P.O. Box and falsely claimed they were her dependents. (Ex. A, ¶¶ 3-4)

11. In submissions to the IRS, Respondent falsely represented herself as individuals for whom she filed false returns, including those she had listed as her dependents on her P.O. Box. As a result, the IRS officially changed the addresses of those individuals to Respondent's P.O. Box. (Ex. A, ¶ 5)

12. Beginning in January 2012 and continuing until August of 2012, Respondent made and presented to the IRS claims against the United States for payment of tax refunds in the amount of \$229,222 of which she knew that at least \$120,000, but no more than \$200,000, to be false, fictitious, and fraudulent. Respondent made the claims by preparing and presenting income tax returns for the year 2011 which requested refunds to which Respondent knew the filers were not entitled. (Ex. A, ¶ 10)

13. Between February 2012 and March 2012, Respondent knowingly stole and converted to her own use food stamp vouchers and money in the sum of \$400 belonging to the U.S. Department of Agriculture, Supplemental Nutrition Assistance Program, to which she knew she was not entitled. (Ex. A, ¶ 11)

14. On July 31, 2014, Respondent was sentenced to 30 months imprisonment and three years of supervision, and was ordered to pay \$120,125 in restitution. (Complaint, ¶ 7; Answer ¶ 7; Ex. C)

15. On February 29, 2016, Respondent reported the conviction to the Department and this case was subsequently opened for investigation and prosecution. (Complaint, ¶ 8; Answer ¶ 8)

16. According to the United States Federal Bureau of Prisons' website, Respondent was released from confinement on September 18, 2015. (<https://www.bop.gov/inmateloc> (last visited on November 27, 2017))

## DISCUSSION

### Violations

*Respondent was convicted of felonies that are bars to licensure under Wis. Admin. Code § REEB 24.17(2m).*

Pursuant to Wis. Stat. § 452.14(3)(L), the Real Estate Examining Board (Board) may discipline a real estate broker for violating any provision of Chapter 452 of the Wisconsin Statutes or any rule promulgated under that chapter. Wisconsin Admin. Code § REEB 24.17(2m), is a rule promulgated under Chapter 452 of the Wisconsin Statutes, and provides that the Board “may revoke a license or registration on the basis of a conviction of a felony that is a bar to licensure or registration under Wis. Stat. § 452.25(1)(1).”

Wisconsin Stat. § 452.25 states that an individual may not be issued a real estate broker’s license if the individual has been convicted of a felony, except as provided in Wis. Stat. § 452.25(1)(b) to (e). Pursuant to Wis. Stat. § 452.25(1)(b), before the individual can be considered for licensure, three years must have elapsed since the date on which the confinement portion of the sentence was completed or the individual was released. After the three years have elapsed, an individual may apply to the Board for a determination as to whether the individual is suitable to be granted a license. Wis. Stat. § 452.25(1)(c)-(e).

As previously determined in the November 27, 2017 Summary Judgment Order issued in this matter, Respondent was convicted of three felonies which are a bar to licensure. Moreover, she does not meet the exceptions for licensure because she was released from confinement on September 18, 2015, and is therefore still within three years of her confinement. As a result, disciplinary action may be taken against Respondent’s license pursuant to Wis. Admin. Code § REEB 24.17(2m) and Wis. Stat. § 452.14(3)(L).

*Respondent violated Wis. Admin. Code § REEB 24.17(1) because the circumstances of her felony convictions are substantially related to the practice of real estate.*

Pursuant to Wis. Admin. Code § REEB 24.17(1), the Board may also discipline a real estate broker “on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate.”

Respondent pled guilty to, and was convicted of, three felonies contained in Counts 1-3 of the federal Information filed against her: Mail Fraud, False Claims for Refund and Food Stamp Fraud. As previously determined in the November 27, 2017 Summary Judgment Order issued in this matter, the circumstances of Respondent’s felony fraud convictions substantially relate to the practices of a real estate broker. Therefore, Respondent violated Wis. Admin. Code § REEB 24.17(1).

Respondent violated Wis. Admin. Code § REEB 24.17(1) by failing to report her convictions within 48 hours.

Wisconsin Admin. Code § REEB 24.17(1) requires real estate licensees who have been convicted of a crime to “send to the board within 48 hours after the judgment of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the board may determine whether the circumstances of the crime of which the licensee was convicted are substantially related to the practice of a real estate licensee.” Respondent was convicted on July 31, 2014. However, Respondent did not report her conviction to the Department until February 29, 2016. Accordingly, as concluded in the November 27, 2017 Summary Judgment Order issued in this matter, Respondent has violated Wis. Admin. Code § REEB 24.17(1).

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 recommends that Respondent’s right to renew her real estate broker license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and other case law, the facts of this case, and prior Board decisions.

“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, the State of 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 69 (1984).

Even though Respondent’s license is currently expired, it is appropriate and necessary to impose discipline. Wisconsin Stat. § 440.08(3)(a) allows the holder of a credential to restore the credential even after expiration by simply paying the application renewal fee and a late renewal penalty of \$25. Under subparagraph (b), the Department is empowered with the ability to promulgate rules requiring credential holders who have failed to renew their credentials for five years to complete additional requirements to restore their credentials. Wis. Stat. § 440.08(3)(b). Read together, these provisions have been interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees. Thus, Respondent has an automatic right to renew her license until December 14, 2021.

The same reasons justifying discipline in cases where the licensees are currently credentialed apply to the case at bar, as Respondent may renew her license at any time. See *In the Matter of Disciplinary Proceedings Against Brandon T. Roach*, Order No. 0005126 (Jan. 13,

2017); *In the Matter of Disciplinary Proceedings Against Timothy D. Russell*, Order No. 0004883 (Aug. 18, 2016).<sup>2</sup>

Respondent was convicted of multiple felonies, the circumstances of which are substantially related to the practice of a real estate licensee and which would be a bar to licensure. According to Wis. Admin. Code § REEB 24.17(2m), “the Board may revoke a license or registration on the basis of a conviction that is a bar to licensure.” The Board has explicitly authorized revocation for this circumstance. Revocation is appropriate and necessary to protect the public from other instances of misconduct by Respondent. Revocation of Respondent’s right to renew her license is consistent with prior Board decisions and is an appropriate response to her dishonesty and disrespect for the law, the public welfare and the licensing authorizing governing her profession. See *In the Matter of Disciplinary Proceedings Against Harvey J. Goldstein*, Order No. 0003769 (Oct. 15, 2015) and *Russel*, Order No. 0004883.

Although rehabilitation is also one of the purposes of discipline, it is unlikely in this case. Respondent’s felony convictions demonstrate an extreme disregard for the law, the public and her profession. Notably, Respondent failed to present any mitigating factors as to why she should be trusted to practice real estate. In fact, in her January 2, 2018 submission, Respondent stated that she agrees to having her license revoked but only disputes paying the costs of these proceedings. Respondent made similar statements in emails to the ALJ and Division counsel on November 27, 2017.

Finally, revocation of Respondent’s right to renew her license will serve to deter other real estate professionals from engaging in similar conduct. Revocation will send a strong message to all licensees that perpetuating frauds against the federal government and ignoring one’s duty to timely report such offenses to the Board are serious offenses which will not be tolerated.

In view of the foregoing, Respondent’s right to renew her real estate brokers license must be revoked.

#### Costs

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 Board 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. In previous orders, boards and the Department have considered many factors when determining if all or part of the costs should be assessed against a Respondent. Factors have included: (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 e.g., *In the Matter of Disciplinary*

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<sup>2</sup> Prior Board decisions may be found on the Department’s website.



*Proceedings against Elizabeth Buenzli-Fritz*, Order No. 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.

The Division requests that all costs be borne by Respondent. Based on the facts of this case, I conclude that the Division's request is warranted. The Division has proved every count it alleged. This is not a case where the Division expended resources or incurred additional costs by alleging multiple counts and then failing to prove the counts alleged. Moreover, Respondent's conduct is serious. She was convicted of multiple serious felonies for which she served 30 months in prison and she did not report the convictions to the Department in accordance with Wis. Admin. Code § REEB 24.17(1). Further, as a result of Respondent's conduct, the Division sought and was granted revocation of Respondent's right to renew her license to practice real estate in Wisconsin, the most severe level of discipline available. Notably, Respondent has made no argument with regard to costs, other than generally stating that she disputes having to pay them. Finally, the Department is a program revenue agency whose operating costs are funded by the revenue received from credential holders. 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.

Accordingly, all of the costs of his proceeding are assessed against Respondent in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

#### CONCLUSIONS OF LAW

1. Respondent was convicted of a felony that is a bar to licensure under Wis. Admin. Code § REEB 24.17(2m).
2. Respondent violated Wis. Admin. Code § REEB 24.17(1) because the circumstances of her felony convictions are substantially related to the practice of real estate.
3. Respondent violated Wis. Admin. Code § REEB 24.17(1) by failing to report her convictions within 48 hours.
4. Revocation of Respondent's right to renew her real estate broker license is authorized and appropriate under Wis. Stat. § 452.14(3)(L), Wis. Admin. Code § REEB 24.17(1) and (2m), and the factors set forth in *Aldrich*.
5. Imposition of all costs of these proceedings on Respondent is authorized and appropriate under Wis. Stat. § 440.22(2).

#### ORDER

For the reasons set forth above, IT IS ORDERED that Respondent's right to renew her real estate broker license is REVOKED.

IT IS ALSO ORDERED that 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

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 January 4, 2018.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: 

Jennifer E. Nashold  
Administrative Law Judge