

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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

In the Matter of Disciplinary Proceedings Against
John Ramirez and Conquer Property Management
LLC, Respondents

FINAL DECISION AND ORDER
0005774
Order No. _____

Division of Legal Services and Compliance Case No. 16 REB 033

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 _____ day of May, 2018.

A handwritten signature in black ink, appearing to be "M. J. [unclear]", written over a horizontal line.

Member
Real Estate Examining Board



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

In the Matter of Disciplinary Proceedings
Against John Ramirez and Conquer
Property Management LLC, Respondents

DHA Case No. SPS-18-0002
DLSC Case No. 16 REB 033

PROPOSED DECISION AND ORDER

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

John Ramirez
2422 S. 59th St.
West Allis, WI 53219

Conquer Property Management LLC
P.O. Box 342072
Milwaukee, WI 53234

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 Respondents John Ramirez and Conquer Property Management LLC (Respondents). The Complaint alleged that Respondents' licenses were subject to disciplinary action pursuant to Wis. Stat. §§ 452.14(3)(h), (i) and (L) because Respondents: (1) violated Wis. Stat. § 452.133(1)(f) by failing to safeguard trust funds and other property held as required by rules promulgated under Wis. Stat. § 452.13(5); (2) violated Wis. Admin. Code § REEB 18.031(1) by failing to forward real estate funds to the payee no later than

one business day after receipt, where someone other than the firm is the payee; and (3) violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to the Department and the Board regarding any request for information within 30 days of the date of the request.

The Division served Respondents on January 4, 2018, by sending a copy of the Notice of Hearing and Complaint by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08(1). Respondents 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 February 8, 2018. The undersigned Administrative Law Judge (ALJ) left a voicemail message for Respondents, indicating that if they did not contact the ALJ by 10:45 am, the conference would proceed without them. When Respondents had not contacted the ALJ within the time specified, the ALJ contacted the Division, which moved for default pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). The ALJ indicated that default would be granted. Hours later that same day, Respondent Ramirez contacted the ALJ and provided a new address.

An additional telephone prehearing conference was scheduled for February 19, 2018. Respondent Ramirez appeared but indicated he had not reviewed the Division's Complaint and Notice of Hearing and would like an additional copy. Division counsel indicated she would re-send a copy of the Complaint and a settlement offer to Respondent Ramirez. The ALJ scheduled a telephone status conference for March 19, 2018. At the March 19, 2018 telephone status conference, Respondent Ramirez offered no reason for not filing an Answer or reviewing the Division's proposed settlement agreement. The Division again moved for default. The ALJ provided Respondent Ramirez with a final opportunity to file an Answer or return a signed agreement to the Division by March 23, 2018.

On March 30, 2018, the Division filed a Notice of Motion and Motion for Default. In light of Respondents' failure to file an Answer to the Complaint, the ALJ found Respondents to be in default and issued a Notice of Default and Order on April 5, 2018. Consistent with the notice, the Division filed a recommended proposed decision and order on April 26, 2018.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-18 are set forth in the Division's Complaint against Respondents filed in this matter.

1. Respondent John Ramirez is licensed in the State of Wisconsin as a real estate broker, having license number 56458-90, first issued on September 28, 2011, and expired on December 15, 2016.

2. Respondent Conquer Property Management LLC is licensed in the State of Wisconsin as a real estate business entity, having license number 936998-91, first issued on September 30, 2011, and expired on December 15, 2016.

3. The most recent address on file with the Department for Respondent Ramirez is 6824 West Cleveland Avenue, Milwaukee, Wisconsin 53219-2513.

4. The most recent address on file with the Department for Respondent Conquer Property Management LLC is Post Office Box 342072, Milwaukee, Wisconsin 53234.

5. Respondent Ramirez is the responsible licensee for Respondent Conquer Property Management LLC.

6. On November 1, 2011, Respondents entered into a property management agreement (agreement) with J.B. for properties located at 1915-1917 13th Avenue, South Milwaukee, Wisconsin (properties).

7. The agreement directed Respondents to collect rents and security deposits from renters of the properties; to forward collected rents and security deposits to J.B.; to advertise the properties for rent; to draft rental contracts; and to maintain and repair the properties.

8. Respondents did not timely remit all rents and security deposits from the properties to J.B.

9. On March 31, 2016, the Department received a complaint regarding Respondents' untimely remittance of rents and security deposits from the properties to J.B.

10. On April 22, 2016, the Department received a response from Respondents regarding the March 31, 2016 complaint.

11. Respondents indicated that they have "always been one month behind for this account" and that a check in the amount of \$2,610.50 was to be mailed to J.B. on March 29, 2016.

12. Division Case No. 16 REB 033 was subsequently opened for investigation.

13. On July 25, 2016, the Division mailed Respondent Conquer Property Management LLC a certified letter to its address of record, requesting a response to investigative questions regarding Case No. 16 REB 033.

14. On April 18, 2017, the Division mailed Respondent Ramirez a certified letter to his address of record, requesting a response to investigative questions regarding Case No. 16 REB 033.

15. On October 20, 2016, November 10, 2016, and November 29, 2016, the Division called Respondents' phone number of record to discuss Case No. 16 REB 033.

16. On September 27, 2016, November 10, 2016, December 9, 2016, and April 18, 2017, the Division sent emails to Respondents' email address of record, requesting a response to investigative questions regarding Case No. 16 REB 033.

17. No response has been received from Respondents to the Division's letters, phone calls or emails.

18. Pursuant to Wis. Stat. § 440.08(3), Respondents retain the right to renew their real estate broker license and real estate business entity license through December 14, 2021.

Facts Related to Default

19. The Complaint and Notice of Hearing in this matter were served on Respondents on January 4, 2018, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08(1). The Notice of Hearing informed Respondents: "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 Real Estate Examining Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you with further notice or hearing."

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

21. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a prehearing conference for February 8, 2018, at 10:30 a.m. Notice of this prehearing conference was sent to all parties, with instructions that Respondent Ramirez provide to the ALJ a telephone number at which he could be reached for the conference no later than February 5, 2018. Respondent Ramirez failed to provide a telephone number.

22. At the prehearing conference held on February 8, 2018, the Division provided a telephone number for Respondent Ramirez, whereupon the ALJ left a voicemail for Respondent Ramirez indicating that he should contact the ALJ at the telephone number provided, failing which the ALJ would proceed with the conference without him. When Respondent Ramirez had not contacted the ALJ within the time specified, the ALJ contacted the Division, which moved for default, pursuant to Wis. Admin. Code §§ SPS 2.14 and HA 1.07(3)(c). The ALJ indicated that default would be granted. Hours later that same day, Respondent Ramirez contacted the ALJ and provided a new address.

23. An additional telephone prehearing conference was scheduled for February 19, 2018. Respondent Ramirez appeared but indicated he had not reviewed the Division's Complaint and Notice of Hearing and would like an additional copy. Division counsel indicated she would re-send a copy of the Complaint and a settlement offer to Respondent Ramirez.

24. The ALJ scheduled a telephone status conference for March 19, 2018. Respondent Ramirez appeared but offered no reason for not filing an Answer or reviewing the Division's proposed settlement agreement. The Division again moved for default. The ALJ provided Respondent Ramirez with a final opportunity to file an Answer or return a signed agreement to the Division by March 23, 2018.

25. Respondents did not file an Answer or return a signed agreement to the Division.

26. On March 30, 2018, the Division filed a Notice of Motion and Motion for Default.

27. On April 5, 2018, the ALJ issued a Notice of Default and Order finding that Respondents were in default and requiring the Division to serve no later than May 4, 2018, a recommended proposed decision and order.

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

29. Respondents 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 April 5, 2018 Notice of Default and Order, Respondents are in default for failing to file an answer. *See* Wis. Admin. Code §§ SPS 2.09(4) and 2.14. Accordingly, an order may be entered against Respondents on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

Violations

The Division alleges that Respondents are subject to discipline pursuant to Wis. Stat. § 452.14(3), which states in relevant part:

(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:

...

(h) Failed, within a reasonable time, to account for or remit any moneys coming into the licensee's possession which belong to another person.

(i) Demonstrated incompetency to act as a broker or salesperson, whichever is applicable, in a manner which safeguards the interests of the public.

...

(L) Violated any provision of this chapter or any rule promulgated under this chapter.

Wisconsin Stat. § 452.133(1)(f) states that "[a] firm providing brokerage services to a party to a transaction owes all of the following duties to the party: ...[t]he duty to safeguard trust funds and other property held as required by rules promulgated under s. 452.13(5)." The Real Estate Examining Board promulgated Wis. Admin. Code ch. REEB 18 under Wis. Stat. § 452.13(5). Wisconsin Administrative Code § REEB 18.031(1) states in relevant part: "If a firm receives funds which cannot be deposited by the firm, the firm shall, no later than one business day after receipt, either: (a) Forward the funds to the payee, if someone other than the firm [or] (b) Return the funds to the payer." The undisputed facts establish that Respondents entered into a property management agreement with J.B. for multiple properties. Respondents were to provide brokerage services to J.B. by collecting rents and security deposits, advertising the properties for rent, drafting rental contracts, and maintaining the properties. However, Respondents did not timely remit all rents and security deposits to J.B. Respondents admitted to untimely remittance of rents and security deposits. Therefore, Respondents failed to safeguard J.B.'s property as required and failed to forward the real estate funds to the payee no later than one business day after receipt. The undisputed facts establish that Respondents violated Wis. Stat. § 452.133(1)(f) and Wis. Admin. Code § REEB 18.031(1).

Wisconsin Admin. Code § REEB 24.17(5) states: “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.”

The undisputed facts establish that on July 25, 2016 the Department mailed Respondent Conquer Property Management LLC a request for information by certified mail to the address of record. On April 18, 2017, the Department mailed Respondent Ramirez a request for information by certified mail to his address of record. On October 20, 2016, November 10, 2016, and November 29, 2016, the Department called Respondents’ phone number of record to discuss this matter. On September 27, 2016, November 10, 2016, December 9, 2016, and April 18, 2017, the Department sent emails to Respondents’ email of record requesting a response to investigative questions. No response was received from Respondents to the investigative inquiries. Respondents failed to respond to these requests for information within 30 days. Therefore, Respondents violated Wis. Admin. Code § REEB 24.17(5).

As a result of the above violations, Respondents are subject to discipline pursuant to Wis. Stat. §§ 452.14(3)(h), (i) and (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 Respondent Ramirez’s right to renew his real estate broker license and Respondent Conquer Property Management LLC’s right to renew its real estate business entity 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).

Even though Respondents’ licenses are 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 the credential for five years to complete additional requirements to restore their licenses. *See* 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, Respondents have an automatic right to renew their licenses until December 14, 2021.

The same reasons justifying discipline in cases in which the respondents are currently credentialed apply to this case as Respondents may renew their licenses at any time. *See In the Matter of Disciplinary Proceedings Against Brandon T. Roach*, Order No. 0005126 (Jan. 2017); *In the Matter of Disciplinary Proceedings Against Timothy D. Russell*, Order No. 0004883 (Aug. 18, 2016). Revocation is necessary to protect the public and deter other credential holders from engaging in similar conduct. Rules regulating real estate monies were established to protect the public from mismanagement of customer funds. Contrary to this, Respondents took advantage of their client, despite their contract and the rules of their profession. Respondents failed to timely remit the necessary funds to their rightful owner. It took the intervention of the Department to assist in remittance. Respondents failed to fulfill the responsibilities of their profession. As a result, they are not fit to practice real estate, and revocation is appropriate.

Further, revocation is also necessary to deter other credential holders from engaging in similar conduct. Respondents have demonstrated a lack of respect for the Board's legitimate authority. Respondents failed to cooperate throughout the Department's investigation and in this proceeding. Respondents would not take the time to review the Department's complaint. Respondents' credentials have been expired since December 2016. Therefore, revocation of Respondents' right to renew is an appropriate response to their disrespect for their profession, the public welfare, and the licensing authority governing their profession.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is not likely in this case, as Respondents could not be bothered to respond to the Department's investigative questions or reply to the Department's complaint. Due to Respondents' failure to respond, the Board cannot ascertain whether rehabilitative measures might be effective. Moreover, revocation of Respondents' right to renew their licenses in this case is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter. Licensees need to know this conduct will not be tolerated.

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondents' right to renew their real estate broker license and real estate business entity license is warranted.

Costs

As a result of Respondents' right to renew their credentials 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 Respondents. *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. The Board has also, in previous orders, considered many factors when determining if all or part of the costs should be assessed against a 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.

The following facts are particularly relevant to the instant case. 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 then failing to prove these counts. Second, Respondents' conduct and violations are serious. Respondents failed to timely remit monies to their client and therefore failed to safeguard real estate funds. Respondents did not cooperate with the Department's investigation or with these proceedings. As a result of Respondents' conduct, the Division sought, and was granted, a revocation of Respondents' right to renew their licenses to practice real estate in Wisconsin. A revocation of a license demonstrates a general absence of mitigating factors in this case. Moreover, Respondents made no argument concerning whether costs should be assessed against them. 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 Respondents to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all real estate licensees in Wisconsin.

Based on the foregoing, all of the costs of this proceeding should be assessed against Respondents in an amount to be determined pursuant to Wis. Admin. Code § SPS 2.18.

ORDER

Accordingly, it is hereby ORDERED that Respondent John Ramirez's right to renew his real estate broker license (number 56458-90) and Respondent Conquer Property Management LLC's right to renew its real estate business entity license (number 936998-91) are REVOKED, effective on the date the final decision is signed by the Board.

IT IS FURTHER ORDERED that should Respondents ever apply for a credential with the Department in the future, Respondents 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 May 15, 2018.

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DIVISION OF HEARINGS AND APPEALS
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By. 

Jennifer E. Nashold
Administrative Law Judge