

## 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 the Application for a Real Estate  
Salesperson License for Ross Graham, Applicant

FINAL DECISION AND ORDER

Order **ORDER 0006373**

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**Division of Legal Services and Compliance Case No. 19 REB 004**

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 22 day of August, 2019.

  
Member

Real Estate Examining Board



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

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In the Matter of the Application for a Real Estate  
Salesperson License for Ross Graham, Applicant

DHA Case No. SPS-19-0023  
DLSC Case No. 19 REB 004

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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:

Ross Graham  
235 Milton Avenue  
Janesville, WI 53545

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 Jameson Whitney  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

**PROCEDURAL HISTORY**

On September 13, 2018, the Real Estate Examining Board ("Board") issued a Notice of Denial to Applicant Ross Graham ("Applicant"), denying his application to be a real estate salesperson. The Board determined that Applicant did not establish that he is competent to practice real estate sales in a manner that safeguards the interest of the public, pursuant to Wis. Stat. § 452.03(1). On or about October 9, 2018, Applicant requested a hearing. On February 8, 2019, the Department sent applicant a letter informing him that his request for a hearing had been granted, pursuant to Wis. Admin. Code § SPS 1.08. A hearing was held in this matter on April 29, 2019.

## FINDINGS OF FACT

### Prior Convictions

1. On or about January 10, 2013, Applicant was convicted of misdemeanor Battery based on an argument he got into with a friend during which he punched the friend in the face. (Ex. 2; Ex. 10, p. 2; Hearing Transcript ["Tr."], p. 14)

2. On June 28, 2013, Applicant was convicted of Threats to Injure/Accuse of a Crime, a Class H felony. Another count of Threats to Injure/Accuse of a Crime and a count of Stalking were read in at sentencing. According to the criminal complaint, Applicant, in response to a romantic rejection, made a false accusation of sexual assault against the victim, a student at UW-Oshkosh. Applicant told law enforcement that he did not like to be rejected, responded irrationally to rejection, and took rejection out on other people. He stated that he understands that his behavior is wrong, but cannot help it, and that he is a compulsive liar. Applicant used the internet and social media to harass the victim and further spread his false accusation, even after admitting that he lied about the allegation. (Ex. 1, pp. 1-4; Ex. 10, p. 2; Tr., p. 14)

3. The criminal complaint further states that after admitting to law enforcement that his accusations were false and having an injunction issued against him, prohibiting him from harassing the victim, Applicant posted a letter on-line on UW-Oshkosh's Facebook admissions page accusing the victim of raping and harassing him. The letter had been taken down by University officials but was posted five more times. While being taken into custody by law enforcement the following day, Applicant stated, "All this just because I posted stuff on Facebook?" He also stated, "I hope you realize [the victim] is going to get his ass kicked for this." As a result of Applicant's conduct, the victim suffered anxiety attacks, moved to his parents' home from campus, and eventually, transferred to a different school. In a recorded call with law enforcement the next month, Applicant again admitted the rape complaint was not true but stated that he would stick to his "falsehood." In another recorded call with police, Applicant suggested that he would accuse the officer of sexual assault if the officer did not tell the district attorney's office that the officer was mistaken in arresting Applicant. (Ex. 1, pp. 5-7)

### Application for Real Estate Salesperson License

4. Applicant submitted an application to be a real estate salesperson. He had previously been denied such licensure for reasons not relevant to this proceeding.<sup>1</sup> (Ex. 12; Tr. pp. 12-13)

5. On Department Form 2252 submitted with his recent application, Applicant reported the convictions above. Form 2252 requires applicants to provide, for each conviction, a personal statement, a "judgment of conviction and sentencing," sentence verification, chemical dependency assessments (if alcohol or drug-related convictions), and a certified copy of the police report or criminal complaint. (Ex. 10, p. 2; Tr., p. 14)

6. On June 19, 2018, Applicant sent an email to the Department, providing a certificate of a 72-hour real estate course he had completed. In addition, Applicant stated that he had been

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<sup>1</sup> The record does not include a copy of Applicant's most recent application. The Division included Applicant's 2016 application in its proposed exhibits but did not seek to introduce it into evidence. Neither party provided a copy of any subsequent application and it is unclear if one exists. The Division did have admitted into the record Applicant's most recent Department Form 2252, discussed herein.

informed that day by “KB” or “Kathy” at the Department that the Department did not have documents it had requested related to his misdemeanor battery charge. Applicant stated that if the Department looked at the application status online, it shows that the documents were asked for two years ago and that therefore he knew he submitted them. He further stated:

For your office not to have them on file, is not my fault, but I will submit them yet again. KB also told me that these documents are needed by the legal department to determine if I present a risk as a WI real estate license holder. I didn’t mention it then, but I will say it now: I clearly do not present any risk to anyone; so how is it that I could ‘present a risk’ by finally being granted my real estate sales license? . . . I can tell you right now, if this application is denied again, I will consider it illegal discrimination and I will be contacting my attorney. This is not right.

(Ex. 3, pp. 1-2)

7. Division paralegal Kathey Bilek responded the same day, informing Applicant that documentation relating to all convictions is something the Department requests from all applicants because a complete file is required in order to conduct a proper evaluation prior to making a determination. (Ex. 3, p. 1)

8. As a courtesy, Ms. Bilek checked Applicant’s prior application to determine if he had provided the missing information with that application. He had not. (Tr., pp. 16-17)

9. On July 11, 2018, a Department employee contacted Applicant by email, requesting the following related to the 2013 conviction for battery, which Applicant had failed to provide with his application:

- The judgment of conviction;
- Proof that he completed substance abuse treatment;
- Proof that he completed aggression/anger management treatment.

(Ex. 4, p. 2)

10. Applicant responded by email the same day, stating, “I do not have any of that information.” (*Id.*)

11. The Department responded the same day, asking Applicant to provide a written statement stating that he does not have the information, and stating that if Applicant had tried to obtain the information and could not do so, he “might want to add” that. (Ex. 4, p. 1)

12. In an email sent to the Department the same day, Applicant stated, “I’ve done all I’m going to do to obtain a real estate license. It should have been more than enough. I’m done submitting documents and dealing with the DSPS. They can deny the application again for all I care at this point.” (*Id.*)

13. Eight days later, on July 19, 2018, Applicant sent an email to the Department, stating:

Let this email serve as notice that I am not submitting further documentation regarding the battery charge from 2012; I’ve submitted enough documentation

and I'm not wasting any more of my time. I do not have the judgment of conviction for that charge and I must not have ever had it. I talked to my counselor at the time in regards to anger management and possible AODA dependency issues and he didn't find that I have any dependency on alcohol or any other substance. I will not be taking any more time to get documentation from the court or write personal narratives. I'm very disappointed and frustrated with the DSPS and the lack of professionalism on the part of anyone involved with this application. As I told Katie recently via email, I don't even care what happens with the application at this point. Let the legal department know that they can deny the application finally and for the second time in two years.

(Ex. 5)

14. On September 13, 2018, the Board issued a Notice of Denial to Applicant, stating that his application was being denied on grounds that his convictions demonstrate aggressive behavior toward other people and an inability to handle conflicts in an appropriate and safe manner. The Notice further indicated that possible anger management or other mental health issues called Applicant's competence into question. The Notice also stated that Applicant declined to provide the Board with requested additional information which impeded the Board's ability to further assess any potential rehabilitation or current competence. The Board concluded that granting Applicant a real estate salesperson license created an unreasonable risk of harm to the public as Applicant did not establish that he was competent to practice real estate sales in a manner that safeguards the interest of the public, pursuant to Wis. Stat. § 452.03(1). (Ex. 6)

15. At hearing, Applicant conceded that he did not attempt to obtain the requested information. He testified that he did not do so because he was frustrated and considered mental health and AODA information private and not relevant to obtaining a real estate salesperson credential. In addition, he thought it was "out of line" for the Department to request this information when the treatment was part of his probation, and he had completed probation. He stated that maybe he should have held back on the tenor of his emails to the Department but that part of his mental health issues involve being obsessive-compulsive and making impulsive decisions. (Tr., pp. 22, 25, 27-29, 32, 34-35, 37, 43)

### DISCUSSION

On review of a denial of a license application, the applicant "has the burden of proof to show by evidence satisfactory to the credentialing authority that the applicant meets the eligibility requirements set by law for the credential." Wis. Admin. Code § SPS 1.08(4). In requesting a hearing, the applicant must set forth a "specific description of the mistake in fact or law which constitutes reasonable grounds for reversing the decision to deny the application for a credential." Wis. Admin. Code § SPS 1.07(3).

The Real Estate Examining Board may grant a license only to a person who is "competent" to transact the business or occupation of a real estate salesperson "in a manner that safeguards the interests of the public, and only after satisfactory proof of the person's competence has been presented to the board." Wis. Stat. § 452.03(1). Applicant has failed to meet his burden of establishing that he meets the requirements of Wis. Stat. § 452.03(1). Specifically, he has not shown that he is competent to transact business in a manner that safeguards the interest of the public.

The Board was rightly concerned about Applicant's history of criminal behavior, which involved violence, dishonesty, lack of respect for legitimate authority, and an inability to control his impulsive and destructive behavior. Given the nature of Applicant's convictions, the Board would have been derelict in its duties had it not followed up with Applicant to discern the scope and findings of any anger management and/or AODA treatment Applicant had received and to obtain details regarding Applicant's battery conviction. The Board has a duty to ensure that any real estate professionals it licenses do not pose a danger to the public and that they are competent to practice. Real estate sales require a high degree of honesty, professionalism, and the ability to handle conflicts in an appropriate manner. Applicant refused to provide the necessary information so the Board could assess whether he has been successfully rehabilitated following his disturbing and highly unethical conduct. Applicant stated at hearing that he believes the Board is not entitled to the information requested of him, and that his frustrated responses to these requests were caused in part by his impulsive behavior. Rather than allaying any concerns about his past conduct, Applicant instead showed throughout the application process and at hearing that the Board is right to be concerned that Applicant will be unable to conduct himself as a real estate salesperson in a competent manner that safeguards the interests of the public.

#### CONCLUSIONS OF LAW

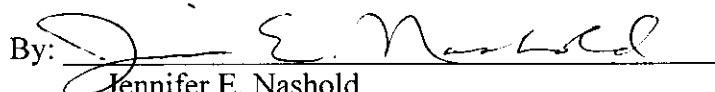
Applicant has not met his burden of showing that he meets the eligibility requirements set by law to be a real estate salesperson pursuant to Wis. Admin. Code § SPS 1.08(4), or that the Board made a mistake in fact or law which constitutes reasonable grounds for reversing the Board's decision to deny the application for a credential under Wis. Admin. Code § SPS 1.07(3). Specifically, Applicant has not shown that he is competent to transact the business or occupation of a real estate salesperson in a manner that safeguards the interests of the public pursuant to Wis. Stat. § 452.03(1).

#### ORDER

For the reasons set forth above, IT IS ORDERED that the Board's denial of Applicant Ross Graham's application for licensure is affirmed, effective the date the Final Decision and Order is signed by the Board.

Dated at Madison, Wisconsin on May 31, 2019.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By:   
Jennifer E. Nashold  
Administrative Law Judge