

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF THE APPLICATION FOR
A REAL ESTATE SALESPERSON
LICENSE

JAMES SCHMITT,
APPLICANT.

:
:
:
:
:
:
**ORDER GRANTING
LIMITED LICENSE**

ORDER 0006565

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

JAMES SCHMITT

REAL ESTATE EXAMINING BOARD
P.O. BOX 7190
MADISON, WI 53707-7190

FINDINGS OF FACT

1. JAMES SCHMITT (Applicant) has filed an application (no. 695178) for a Wisconsin Real Estate Salesperson license.
2. Information received in the application process reflects that the Applicant has the following convictions on his record:
 - A. On or about December 5, 2016, Applicant was convicted in Brown County Circuit Court case number 2016CM1239, of one (1) count of Attempt Election Fraud-Fraud/Registration, a Class A misdemeanor, in violation of Wis. Stat. § 12.12(1)(b), one (1) count of Attempt Unlawful Political Contributions, a Class A misdemeanor, in violation of Wis. Stat. § 11.24(1), and one (1) count of Attempt Int. Personal Campaign \$/Candidate (<=\$100), a misdemeanor, in violation of Wis. Stat. § 11.26(1)(d).
3. On or about October 23, 2019, Applicant was mailed a letter providing him with an opportunity to provide the Department with evidence of his rehabilitation and fitness to engage in the practice of a Real Estate Salesperson, pursuant to Wis. Stat. § 111.335(4)(c). Applicant did not submit any documentation for consideration.
4. On October 28, 2019, Applicant sent an e-mail to the Department indicating that he accepted the limitations on his license.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining Board has jurisdiction over this matter pursuant to Wis. Stat. §§ 452.14(3) and 440.08(4)(a).

2. Pursuant to Wis. Stat. § 452.14(3)(p), the Real Estate Examining “[B]oard may revoke, suspend, or limit the license of any licensee,... if it finds that the licensee has done any of the following:...(p) Subject to ss. 111.321, 111.322, and 111.335, been convicted of an offense the circumstances of which substantially relate to real estate practice.” A substantial relationship occurs where “the tendencies and inclinations to behave a certain way in a particular context are likely to reappear later in a related context, based on the traits revealed.” *County of Milwaukee v. Labor & Industry Review Comm’n*, 139 Wis. 2d 805, 824 (1987). The crux of the inquiry is the circumstances which foster criminal activity, e.g., the opportunity for criminal behavior, the reaction to responsibility, or the character traits of the person. *Id.* Your conviction history calls into question your current competency to transact the business of real estate sales in a manner that protects the public.
3. The facts and circumstances surrounding the above-referenced conviction record substantially relate to the practice of a Real Estate Salesperson.

Applicant has been convicted of Attempt Election Fraud-Fraud/Registration, Unlawful Political Contributions, and Attempt Int. Personal Campaign Money/Candidate based on events that occurred while you were serving as the Mayor of Green Bay, Wisconsin. Applicant was sentenced to a fine and costs totaling \$6409.00, and forty (40) hours of community service. Applicant completed the community service in January 2017 and paid the fines and costs.” Applicant’s conviction and violation substantially relate to the practice of a real estate salesperson because the business of real estate involves the ability to interact with clients, other professionals, and the public in an appropriate and safe manner. Real estate salespeople must follow the law and be honest and ethical, therefore they cannot amend documents to get around a law, rule or fact. At this time, Applicant has failed to show competent evidence of sufficient rehabilitation and fitness to practice as a real estate salesperson without limitations, particularly in light of the pattern of behavior and convictions as described above.

4. Limitations upon Applicant’s license are necessary to protect the public health, safety or welfare, pursuant to Wis. Stat. § 440.08(4).
5. Applicant, by his conduct, is subject to limitations against his license, pursuant to Wis. Stat. §§ 111.335(3)(a)1., 452.14(3), and 440.08(4).

ORDER

NOW, THEREFORE, IT IS ORDERED that JAMES SCHMITT is GRANTED A REAL ESTATE SALESPERSON LICENSE subject to the following LIMITATIONS, TERMS, AND CONDITIONS FOR A PERIOD OF AT LEAST TWO (2) YEARS FROM THE DATE OF THIS ORDER:

Practice Limitations

- A.1. Applicant shall, at all times, practice as a Real Estate Salesperson under the supervision of a Wisconsin licensed Real Estate Broker approved by the Board. Approval shall be

obtained through correspondence with the Department of Safety and Professional Services Monitor (Department Monitor).

- A.2. Applicant shall notify his broker-supervisor(s)/employer(s) of his history of arrests and convictions prior to employment. Applicant shall show a copy of this Order to his current and any future employer. Applicant shall provide the Department Monitor with written acknowledgement from each employer that a copy of this Order has been received. Such acknowledgement shall be provided to the Department Monitoring within fourteen (14) days of beginning new employment and/or within fourteen (14) days of the date of this Order for employment current as of the date of this Order.
- A.3. Applicant shall commit no new violations of law and shall report all law enforcement contacts leading to arrest, charge or conviction, including DWI/OWI and municipal/ordinance violations, to the Department Monitor within forty-eight (48) hours of any such event, including any convictions resulting from pending charges.

Reporting Requirements

- A.4. Applicant shall file quarterly reports with the Board at the direction of the Department Monitor commencing ninety (90) days after Applicant commences employment under this Order. Each report shall include the following:
- i. The name, address and telephone number of Applicant, and name, address and telephone number of his employer;
 - ii. A statement from the Applicant as to whether he has had any law enforcement contacts leading to arrest, charge or conviction (including DWI/OWI and municipal/ordinance violations) during the term of the Order.
 - iii. Applicant shall report to the Department Monitor any change of employment status, residence, address or telephone number within five (5) days of the date of a change.
- A.5. Applicant shall arrange for written reports from his broker-supervisor(s)/employer(s) to be provided to Department Monitor on a quarterly basis, as directed by Department Monitor. These reports shall assess Applicant's work performance and describe the circumstances of his employment, including the nature and extent of the Applicant's sales activities and whether he has practiced in compliance with all laws governing the practice of real estate as a salesperson.
- A.6. Applicant is responsible for compliance with all of the terms and conditions of this Order, including the timely submission of reports by others. Applicant shall promptly notify Department Monitor of any suspected violations of any of the terms and conditions of this Order.
- A.7. The Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order. Any requests, petitions, reports or other information required by this Order shall be mailed, faxed or delivered to:

DEPARTMENT MONITOR
Department of Safety and Professional Services
Division of Legal Services & Compliance

P.O. Box 7190, Madison, WI 53707-7190
Telephone: (608) 267-3817; Fax: (608) 266-2264
dspsmonitoring@wi.gov

You may also submit this information online via DSPS Monitoring Case management System here:

<https://app.wi.gov/DSPSMonitoring>

Petitions for Modification

- A.8. Applicant may petition the Department Monitor for full, unrestricted licensure upon demonstration of continuous, successful practice in compliance with the terms and conditions of the Order for at least two (2) years. "Practice in compliance" includes the submission of work reports, the contents of which are satisfactory to the Board. Applicant's petition must include his history of employment from the effective date of this Order that states the dates and names of any employer, such employment in total equaling two (2) years of practice. Any such petition shall be accompanied by a written recommendation from Applicant's current employer that includes, among other things, the dates of employment and scope of responsibility during such employment. A denial of such a petition for full licensure shall not be deemed a denial of license under Wis. Stat. §§ 227.01(3), or 227.42, or Wis. Admin. Code Ch. SPS 1, and shall not be subject to any right to further hearing or appeal.

Costs

- A.9. Applicant shall be responsible for all costs and expenses associated with compliance with the terms of this Order.

Suspension

- A.10. In the event that the Applicant violates any term of this Order, Applicant's license may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Applicant has provided proof, which is determined by the Board or its designee to be sufficient, that Applicant is in compliance with the terms of the Order. The Board may, in addition and/or in the alternative, refer any violation of this Order to the Division of Legal Services and Compliance for further investigation and action.

Dated at Madison, Wisconsin this 26 day of November, 2019

By: Thomas Richi/c. A
A Member of the Real Estate Examining Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF AN APPLICATION FOR :
A REAL ESTATE SALESPERSON :
LICENSE :

JAMES SCHMITT,
APPLICANT. :

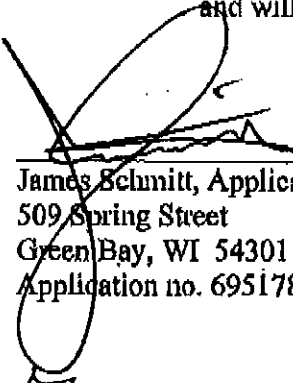
STIPULATION

ORDER 0006565


It is hereby stipulated between the above-referenced Applicant and the Real Estate Examining Board (Board) as follows:

1. The Applicant has filed an application for a Real Estate Salesperson license.
2. Information received by the Board reflects a basis for denial of the application.
3. Based upon the information of record herein, the Board agrees to issue, and the Applicant agrees to accept, an Order granting a renewal of license, subject to the terms and conditions set forth in the attached Order adopting the Stipulation.
4. Applicant understands that by signing this Stipulation, Applicant voluntarily and knowingly waives the following rights:
 - The right to request a hearing related to the denial of the application;
 - assuming a hearing takes place wherein the Applicant has the burden of proof by a preponderance of the evidence;
 - the right to confront and cross-examine the witnesses against Applicant;
 - the right to call witnesses on Applicant's behalf and to compel their attendance by subpoena;
 - the right to testify on Applicant's own behalf;
 - the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
 - the right to petition for rehearing; and
 - all other applicable rights afforded to Applicant under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.
5. Applicant is aware of Applicant's right to seek legal representation and has been provided an opportunity to obtain legal counsel before signing this Stipulation.
6. Applicant agrees to the adoption of the attached Order Granting Limited License by the Board. The parties to the Stipulation consent to the entry of the attached Order Granting Limited License without further notice, appearance, or consent of the parties.

7. Applicant waives all rights to any appeal of the Board's Order, as adopted in the form as attached.
8. Applicant is informed that the Order Granting Limited License is a public record and will be published in accordance with standard procedure.


James Schmitt, Applicant
509 Spring Street
Green Bay, WI 54301
Application no. 695178

11.15.19
Date


A Member of the Real Estate Examining Board
Department of Safety and Professional Services
P.O. Box 7190
Madison, WI 53707-7190

11/26/2019
Date