

## 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  
Jennifer A. Holliday, Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0007055**

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**Division of Legal Services and Compliance Case No. 17 REB 124**

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 29 day of October, 2020.

A handwritten signature in cursive script, reading "Thomas J. Rutledge".

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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  
Jennifer A. Holliday, Respondent

DHA Case No. SPS-19-0045  
DLSC Case No. 17 REB 124

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**PROPOSED DECISION AND ORDER**  
*Sent via electronic mail and U.S. mail*

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

Jennifer A. Holliday  
19433 Jamoree Road  
Sparta, WI 54656  
[hollidaysells@gmail.com](mailto:hollidaysells@gmail.com)

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  
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**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 on Respondent Jennifer A. Holliday (Respondent). The Complaint alleged that Respondent's license was subject to disciplinary action pursuant to Wis. Stat. §§ 452.14(3)(i), (L) and (4m)(b), because (1) Respondent violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to the Department regarding a request for information

within 30 days from the date of the request; (2) Respondent violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care pursuant to Wis. Stat. § 452.133(4m)(a); (3) Respondent violated Wis. Admin. Code § REEB 15.04(1) by failing to retain for at least 2 years exact copies of all transaction documents.

The Division served Respondent on August 21, 2019, 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). Respondent failed to file an Answer.

Following the expiration of the 20-day time period to file an Answer, Administrative Law Judge (ALJ) Sally Pederson scheduled a telephone prehearing conference for September 17, 2019. Notice of this prehearing conference was sent to both parties. During the prehearing conference on September 17, 2019, the Division requested leave to file an Amended Complaint on the grounds that the Division had received additional information from Respondent related to the current matter. The ALJ granted the request, ordered the Division to file an Amended Complaint by email by October 1, 2019, and directed Respondent to file an Answer to the Amended Complaint within 20 days of receipt.

The Division filed and served Respondent on October 1, 2019, with the Amended Complaint by email, pursuant to the ALJ's order. Respondent failed to file an Answer to the Amended Complaint and failed to appear at the telephone prehearing conference held on October 29, 2019.

The Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c). In light of Respondent's failure to file an Answer to the Amended Complaint and failure to appear for the October 29, 2019 prehearing conference, the ALJ found Respondent to be in default and issued a Notice of Default and Order on October 29, 2019. Consistent with the Notice, the Division filed a recommended proposed decision and order on December 6, 2019.

## FINDINGS OF FACT

### Facts Related to the Alleged Violations

Findings of Facts 1-17 are set forth in the Division's Amended Complaint against Respondent filed in this matter.

1. Respondent Jennifer A. Holliday is licensed by the State of Wisconsin as a real estate broker, having license number 56586-90, first issued on February 27, 2012 and current through December 14, 2020.
2. The most recent home address on file with the Department for Respondent is 19433 Jamboree Road, Sparta, Wisconsin 54656.
3. The most recent business address on file with the Department for Respondent is 200 Mason Street, Suite 18, Onalaska, Wisconsin 54650.

4. On December 31, 2017, the Department received a complaint alleging that Respondent failed to apply for and provide payment for a seller home warranty as specified in the offer to purchase a home. Division Case Number 17 REB 124 was subsequently opened for investigation.
5. On October 27, 2017, a residential transaction closed in which Respondent represented the seller. The offer to purchase stated that the seller was responsible for providing a home warranty.
6. On December 24, 2017, the buyer's dryer failed, and the buyer could not find any information regarding the home warranty.
7. On January 26, 2018, the Division mailed Respondent a letter requesting a response to the complaint, at her home address of record, with the Department. Respondent's response was due by February 12, 2018. The Department did not receive a response.
8. On March 20, 2018, the Division mailed Respondent a certified letter requesting a response to the complaint, at her home address of record, with the Department. The letter was returned to the Department, on April 18, 2018, as "unclaimed." Notes on the envelope indicate that the postal carrier attempted to deliver the letter, on March 22, 2018, March 27, 2018, and April 6, 2018. Respondent's response was due by April 3, 2018. The Department did not receive a response.
9. On March 20, 2018, the Division mailed Respondent a certified letter requesting a response to the complaint, at her business address of record, with the Department. The letter was signed for by Gary A. Fischer on March 23, 2018. Respondent's response was due by April 3, 2018. The Department did not receive a response.
10. On June 7, 2018, the Division mailed Respondent a certified letter requesting a response to the complaint at her business address of record. The letter was returned to the Department on July 5, 2018 as "unable to forward." Notes on the envelope indicate that the postal carrier attempted to deliver the letter on June 11, 21, and 26, 2018. The Department did not receive a response.
11. On July 13, 2018, the Division sent an email to Respondent requesting a response to the complaint. The email was sent to Respondent's email address of record. The email explained that the Department had been attempting to contact her and included copies of previous contact attempts as well as a copy of the complaint. Respondent's response was due by July 27, 2018. The Department did not receive a response.
12. On July 13, 2018, the Division called Respondent at Respondent's phone number of record. Respondent did not answer the phone. The Division left a voicemail explaining that the Division had been attempting to contact her and requesting a response. Respondent did not respond to this phone call or voicemail.
13. On October 26, 2018, the Division mailed Respondent a certified letter requesting a response to the complaint at her home address of record. The letter was signed for, on

October 29, 2018, by Dakota Holliday. Respondent's response was due by November 11, 2018. The Department did not receive a response.

14. On October 26, 2018, the Division called Respondent at Respondent's phone number of record. Respondent did not answer the phone. The Division left a voicemail explaining that the Division had been attempting to contact her and requesting a response. Respondent did not respond to this phone call or voicemail.
15. On May 20, 2019, the Division sent Respondent an email requesting a response to the complaint to Respondent's email address of record. Respondent responded to this email on the same day and stated that she had sent a response in the mail twice, but that she had not received any response or correspondence since mailing her response. Respondent stated that she would attempt to call the Division when she returned from a trip. The Department did not receive a follow-up call from Respondent. Respondent's response to the May 20, 2019 email was due by June 3, 2019. The Department did not receive a substantive response.
16. On June 6, 2019, the Division sent Respondent an email requesting a response to the complaint to Respondent's email address of record. Respondent's response was due by June 20, 2019. The Department did not receive a response.
17. On August 28, 2019, Respondent emailed the Division a response to the complaint and included screenshots of correspondence with Complainant and Complainant's agent. A review of these materials revealed the following:
  - a. On December 26, 2017, the buyer contacted Respondent to request information regarding the home warranty.
  - b. On December 26, 2017, the buyer's agent also contacted Respondent to request information regarding the home warranty.
  - c. From December 26 to December 28, 2017, the buyer's agent made numerous requests via text message for the name of the home warranty company, for proof of the home warranty, and for proof of a cancelled invoice for the home warranty.
  - d. On December 26, 2017, Respondent initially stated that the lack of a home warranty was due to an error by the title company.
  - e. On December 27, 2017, Respondent then stated that she had received a notice of cancellation of the home warranty.
  - f. Respondent could not produce the notice of cancellation of the home warranty when requested due to a change in her company's franchise affiliation.
  - g. Respondent paid for the buyer's home warranty on or about December 31, 2017.

### Facts Related to Default

18. The Complaint and Notice of Hearing in this matter were served on Respondent on August 21, 2019, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08(1). The Notice of Hearing informed Respondent: "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 Board may take disciplinary action against you and impose the costs of the investigation, prosecution and decision of this matter upon you without further without further notice or hearing."
19. Respondent did not file a written Answer as required by Wis. Admin. Code § SPS 2.09(4).
20. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a prehearing conference for September 17, 2019 at 1:30 p.m.
21. At the prehearing conference held on September 17, 2019, the Division requested leave to file an Amended Complaint on the grounds that it had received additional information from Respondent related to the current matter. The ALJ granted the request, ordered the Division to file an Amended Complaint by October 1, 2019, and ordered Respondent to file an Answer to the Amended Complaint within 20 days of receipt and in accordance with the directions set forth in the Notice of Hearing dated August 21, 2019. At the request of Respondent, filing of documents was allowed by electronic mail.
22. On September 17, 2019, the ALJ sent the parties, via electronic mail, a Prehearing Conference Report and Notice of Telephone Prehearing Conference scheduled for October 29, 2019 at 11:00 a.m. The Notice stated: "The Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."
23. The Amended Complaint and a copy of the August 21, 2019 Notice of Hearing were served on Respondent on October 1, 2019 by electronic mail.
24. Respondent did not file an Answer to the Amended Complaint.
25. At the prehearing conference held on October 29, 2019, the ALJ attempted to contact Respondent at her telephone number of record. At approximately 11:02 a.m., the ALJ left a voicemail for Respondent indicating that Respondent should return the ALJ's call within 15 minutes at the telephone number provided by the ALJ, failing which the ALJ would proceed with the conference without Respondent. Respondent did not contact the ALJ, and the prehearing conference was reconvened at approximately 11:23 a.m. without Respondent. Based on Respondent's failure to file an Answer to the Amended Complaint and failure to appear at the prehearing conference, the Division moved for default pursuant to Wis. Admin. Code § SPS 2.14 and Wis. Admin. Code § HA 1.07(3)(c).

26. On October 29, 2019, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to serve no later than December 6, 2019, a recommended proposed decision and order.

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

### DISCUSSION AND CONCLUSIONS OF LAW

#### Jurisdictional Authority

Pursuant to Wis. Admin. Code § SPS 2.10(2), the undersigned ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1).

#### Default

By failing to file an answer to the complaint, Respondent violated Wis. Admin. Code § SPS 2.09(4). As stated in the Notice of Default and Order dated October 29, 2019, Respondent is in default for failing to file an Answer within 20 days of receipt of the Amended Complaint. *See* Wis. Admin. Code § SPS 2.14. Accordingly, an order may be entered against Respondent on the basis of the Amended Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14.

#### Violations

The Real Estate Examining Board (Board) possesses the authority to impose discipline upon licensees under Wis. Stat. § 452.14(3) and (4m), as follows:

(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: (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;

(4m) In addition to or in lieu of a reprimand or a revocation, limitation, or suspension of a license under sub. (3), the board may do any of the following: (b) Require a licensee to successfully complete education or training, in addition to any education or training required for licensure or for renewal of a license under this chapter, as a condition of continued licensure or reinstatement of a license.

Here, Respondent violated Wisconsin statute and administrative rule governing real estate brokers by: (1) failing to respond to multiple requests for information made by the Division on behalf of the Board; (2) failing providing brokerage services with reasonable skill and care; and (3) failing to retain complete transaction documents for at least two years.



Wis. Admin. Code § REEB 24.17(5) states that “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 the Department received a complaint on December 31, 2017 alleging that Respondent failed to apply for and provide payment for a seller home warranty as specified in the offer to purchase a home. The Department made multiple attempts to contact Respondent for information regarding the complaint. The Department sent requests for information via U.S. mail on January 26, March 20, June 7, and October 26, 2018. When written requests went unanswered the Department staff attempted to make contact with Respondent via telephone on July 13 and October 26, 2018, and via email on July 13, 2018, May 20, 2019, and June 6, 2019. Respondent did not provide a substantive response to any of these requests for information. Accordingly, by her repeated failure to respond to the Department, Respondent violated Wis. Admin. Code § REEB 24.17(5).

Pursuant to Wis. Stat. § 452.133(1)(b), a firm providing brokerage services to a party to a transaction has a duty to provide brokerage services with reasonable skill and care. In addition, Wis. Stat. § 452.133(4m)(a) provides that “subject to par. (d), a firm's duties under sub. (1) extend to each licensee associated with that firm, and each licensee associated with a firm owes the same duties to a party that the firm owes to that party under sub. (1).” Wis. Admin. Code § REEB 15.04(1) requires that a firm “retain for at least two years, unless required by federal law or there is an active or ongoing investigation by the Board, exact and complete copies of all listing contracts, agency agreements, offers to purchase, leases, closing statements, deposit receipts, cancelled checks, trust account records and other documents or correspondence utilized, received or prepared in connection with any transaction.”

In the instant case, the undisputed facts establish that Respondent represented the seller in a residential transaction that closed on October 27, 2017. The offer to purchase stated that the seller was responsible for providing a home warranty. On December 24, 2017, the buyer's dryer failed, and the buyer could not find any information regarding the home warranty. From December 26 through December 28, 2017, the home buyer and the home buyer's agent made multiple requests for a copy of, or any information regarding, the home warranty. On December 26, 2017, Respondent stated that the lack of a home warranty was due to an error by the title company. On December 27, 2017, Respondent stated that she had received a notice of cancellation of the home warranty. However, Respondent failed to produce a copy of the notice of cancellation of the home warranty, and on December 31, 2017, Respondent paid for the buyer's home warranty.

On January 26, 2018, three months after the transaction closed, the Department requested Respondent provide transaction documents and respond to the complaint. No documentation was ever produced after multiple requests. Therefore, Respondent violated Wis. Admin. Code § REEB 15.04(1).

Moreover, as the agent for the seller, it was Respondent's responsibility to secure a home warranty for the buyer pursuant to the parties' agreement. No warranty was secured until months after closing and when an issue arose. Respondent failed to provide brokerage services to all parties in the transaction with reasonable skill and care, as required by law. Her negligence led to financial harm for the buyers. By the conduct described above, Respondent violated Wis. Stat. § 452.133(1)(b).

As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. § 452.14(3)(i), (L), and (4m)(b).

#### 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).

In this case, the Division recommended that Respondent's real estate broker license be suspended until she completes remedial education on the topics of Business Ethics and Financial and Office Management, or for at least 30 days, whichever is longer.

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 suspension or revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189–90, 349 N.W.2d 68 (1984).

Real estate brokers are entrusted to protect personal information, personal property and hold large amounts of money. Here, Respondent demonstrated negligence in office organization and practices and displayed persistent avoidance of Department communication. Respondent's apparent disrespect for the Board's statutory authority raises serious concerns about her competency. Suspension is necessary to protect the public from other instances of misconduct until she can be rehabilitated and to deter other credential holders from engaging in similar conduct. The Board needs to be assured Respondent has sufficient competency before the Board permits Respondent to practice. Accordingly, a suspension of Respondent's license is appropriate response to Respondent's disrespect for the law, the public welfare, and the licensing authority governing her profession.

Promoting rehabilitation is one of the purposes of discipline. Accordingly, requiring Respondent to pursue additional education in Business Ethics and Financial and Office Management should accomplish this purpose. Moreover, ordering Respondent to take remedial education courses will help ensure that Respondent possesses the necessary competency to practice real estate. Additionally, suspension of Respondent's license for a relatively short period

of time is necessary to deter other licensees from refusing to cooperate with the Board as it relates to a disciplinary matter.

In light of the facts of this case and the factors set forth in *Aldrich*, I find that suspension of Respondent's real estate broker credential until she completes remedial education in Business Ethics and Financial and Office Management, or for at least 30 days, whichever is longer, is warranted.

### 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, the Board has 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, in light of Respondent's default, the factual allegations were deemed admitted, and the Division proved all counts alleged. Second, Respondent's violations were serious. Respondent failed to use the reasonable skill and care expected of a real estate broker, she failed to retain important documents from a real estate transaction, and she did not cooperate with the Department's investigation or with these proceedings. As a result, the Division sought a suspension of Respondent's real estate broker credential with additional limitations. Further, Respondent made no argument concerning whether costs should be assessed against her. 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 Respondent to pay the costs of this proceeding which resulted in significant discipline rather than spreading the costs among all real estate brokers in Wisconsin.

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

### ORDER

Accordingly, it is hereby ORDERED that:

Respondent Jennifer A. Holliday's real estate broker license (number 56586-90) is SUSPENDED for not less than 30 days, effective 10 days from the date the final decision is signed by the Board; and the following is satisfied:

Respondent shall successfully complete courses in business ethics and financial and office management offered by a provider pre-approved by the Board's monitoring liaison, including taking and passing any exam(s) offered for the course.

Respondent shall submit proof of successful completion of the ordered education in the form of verification from the institution providing the education to the Department Monitor at the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that have been or may be instituted by the Board or the Department.

IT IS FURTHER 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. Within 90 days after the amount is established, payment shall be made by check or money order made payable to the Wisconsin Department of Safety and Professional Services and sent to:

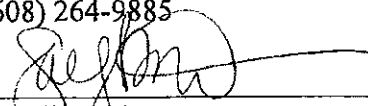
Department Monitor  
Department of Safety and Professional Services  
Division of Legal Services and Compliance  
P.O. Box 7190  
Madison, WI 53707-7190

In the event Respondent violates any term of this Order, Respondent's license (number 56586-90) or Respondent's right to renew her license may, in the discretion of the Board or its designee, be further suspended without further notice or hearing until Respondent has complied 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 on 7 of February, 2020.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
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By: \_\_\_\_\_

  
Sally Pederson  
Administrative Law Judge