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Before the
State Of Wisconsin
Real Estate Examining Board

In the Matter of the Disciplinary Proceedings
Against Dylan J. Brannon, Respondent

FINAL DECISION AND ORDER

Order No. **ORDER 0008339**

Division of Legal Services and Compliance Case No. 21 REB 080

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 14th day of December, 2022.

Al. Rohmeyer

**DSPS Chief Legal Counsel,
Delegates**

Member

~~Real Estate Examining Board~~



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings
Against Dylan J. Brannon, Respondent

DHA Case No. SPS-22-0041
DLSC Case No. 21 REB 080

PROPOSED DECISION AND ORDER

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

Dylan J. Brannon #00580226
C/O Fox Lake Correctional Institution
PO Box 147
Fox Lake, WI 53933-0147

Dylan J. Brannon
4008 Northwestern Ave.
Mount Pleasant, WI 53405

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 Megan Reed
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 Respondent Dylan J. Brannon (Respondent). The Complaint alleged that Respondent's credential 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) violated Wis. Admin. Code § REEB 24.17(1) by violating a law the circumstances of which substantially relate to the practices of a real estate licensee, and (2) violated Wis. Admin.

Code § REEB 24.17(5) by failing to respond to the Department within 30 days to a request for information.

The Division served Respondent on June 8, 2022, by sending a copy of the Notice of Hearing and Complaint to Respondent's address on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondent 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 August 16, 2022.

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 Complaint and failure to provide a telephone number or to appear for the August 16, 2022 prehearing conference, the Administrative Law Judge (ALJ) found Respondent to be in default and issued a Notice of Default and Order on August 16, 2022. Consistent with the Notice, the Division filed a recommended proposed decision and order by September 16, 2022.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-21 are set forth in the Division's Complaint against Respondent filed in this matter.

1. Respondent Dylan J. Brannon (Birth Year 1986) is licensed by the State of Wisconsin as a real estate salesperson, having license number 90771-94, first issued on March 30, 2020 and current through December 14, 2022.
2. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Mount Pleasant, Wisconsin 53405.
3. Upon information and belief, Respondent is currently incarcerated at the Fox Lake Correctional Institution, P.O. Box 147, Fox Lake, WI 53933, DOC # 00580226.
4. On August 4, 2021, the Department received a complaint from Respondent's former employer, who stated that Respondent had been charged with felony Possession of Child Pornography and had been fired by his firm for sexually harassing another agent.
5. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 21 REB 080 for investigation.
6. According to the Complainant, Respondent sent another agent unsolicited shirtless pictures of himself on a motorcycle, and texted the agent that he wanted "to spice up his bedroom life" and asked the agent if she was interested in "swinging." Complainant stated that he fired Respondent for this conduct.

7. In Racine County Circuit Court case number 21 CF 1197, Respondent was charged with one count of Expose Child to Harmful Material, a felony, one count of Possession of THC, a misdemeanor, and five counts of Possession of Child Pornography, a felony.

8. According to the criminal complaint in this case, in October 2020, Respondent represented the sellers in a real estate transaction. In June 2021, Respondent began online correspondence with A.O., the sellers' 12-year-old daughter, through social media.

9. According to the criminal complaint, on June 12, 2021, Respondent sent A.O. a nude photo of himself and another photo of a vagina. Respondent then asked A.O. if she was willing to play truth or dare and asked her for underwear pictures. The messages went on for two to three days. A.O. stated Respondent described his sex life with his girlfriend, how he felt unappreciated, and how he was looking for a third person to have sex with him. A.O. stated Respondent then asked her if she had ever had an orgasm.

10. On July 21, 2021, the Oak Creek Police Department executed a search warrant at Respondent's house. The search found marijuana, a marijuana pipe and grinder, 14 Adderall pills, and a flash drive containing 221 explicit nude photos of young teenage girls.

11. On August 4, 2021, Respondent posted bond. Conditions of the bond include that Respondent is to be on house arrest and have no access to the internet.

12. According to the Wisconsin Circuit Court Access website, Respondent's address in case number 21 CF 1197 was the same address on record with the Department as Respondent's mailing address.

13. On August 23, 2021, a Department investigator sent a letter to Respondent via email and U.S. mail to his email and mailing addresses of record to request a response to the complaint. The Department did not receive a response.

14. On September 6, 2021, a Department investigator sent a letter to Respondent via email and U.S. mail to his email and mailing addresses of record to request a response to the complaint. The Department did not receive a response.

15. On September 22, 2021, a Department investigator sent a letter to Respondent via email and certified mail to his email and mailing addresses of record to request a response to the complaint. The Department did not receive a response.

16. On October 1, 2021, the Department received the certified mail receipt from the September 22, 2021 letter. The receipt had been signed by Respondent on September 24, 2021.

17. On October 12, 2021, a Department investigator sent a letter to Respondent via certified mail to his address of record to request a response to the complaint. The Department did not receive a response.

18. On October 21, 2021, the Department received the certified mail receipt from the October 12, 2021 letter. The receipt was not signed and did not have a date of delivery. USPS tracking history notes for the letter state "Delivered, Left with Individual" on October 16, 2021.

19. On December 10, 2021, a Department investigator sent a letter to Respondent via certified mail to his address of record to request a response to the complaint. The Department did not receive a response.

20. On December 20, 2021, the Department received the certified mail receipt from the December 10, 2021 letter. The receipt was signed "V. Shannon, TW 573 C-19."

21. On January 21, 2022¹, Respondent pled guilty to one count of Expose Child to Harmful Material and three counts of Possession of Child Pornography, all felonies, and one count of Possession of THC, a misdemeanor, in Racine County Circuit Court case number 21 CF 1197.

Facts Related to Default

22. The Notice of Hearing and Complaint and in this matter were served on Respondent on June 8, 2022, by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. 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 other costs pursuant to Wis. Admin. Code § SPS 2.18, without further notice or hearing."

23. Respondent did not file a written Answer as required by Wis. Admin. Code § SPS 2.09(4).

24. Following the expiration of the 20-day time period to file an Answer, the ALJ scheduled a telephone prehearing conference for July 19, 2022 at 10:30 a.m. Notice of this prehearing conference was sent to all parties.

25. However, the ALJ subsequently learned that Respondent had been transferred to a new correctional facility. Thus, the ALJ rescheduled the telephone prehearing conference for August 16, 2022 at 10:00 a.m. Notice of this rescheduled prehearing conference was sent to both parties, with instructions that Respondent provide the ALJ with a telephone number at which Respondent could be reached no later than August 15, 2022. The Notice advised: "[t]he Respondent's failure to appear at a scheduled conference or hearing may result in default judgment being entered against the Respondent."

26. Respondent failed to provide a telephone number at which Respondent could be reached for the prehearing conference.

27. At the prehearing conference held on August 16, 2022, Respondent did not appear.

28. Based on Respondent's failure to file an Answer to the 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).

¹ The Division's Complaint mis-identified the Respondent's conviction date as being January 21, 2021. According to the Wisconsin Circuit Court Access website, the correct date of the conviction was January 21, 2022.

29. On August 16, 2022, the ALJ issued a Notice of Default and Order finding that Respondent was in default and requiring the Division to file and serve, no later than September 16, 2022, a recommended proposed decision and order.

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

31. Respondent did not file a response to the Notice of Default or to the Division's recommended proposed decision and order.

DISCUSSION AND CONCLUSIONS OF LAW

Default

As stated in the August 16, 2022 Notice of Default and Order, Respondent is in default for failing to file an answer and failure provide a telephone number or to appear for the August 16, 2022 prehearing conference. Accordingly, an order may be entered against Respondent on the basis of the Complaint and other evidence. *See* Wis. Admin. Code § SPS 2.14; Wis. Admin. Code § HA 1.07(3)(b) and (c).

Violations of Wis. Admin. Code §§ REEB 24.17(1) and (5)

The Wisconsin Real Estate Examining Board (Board) possesses the authority to impose discipline upon licensees under Wis. Stat. § 452.14(3)(L) and (p), 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: (L) Violated any provision of this chapter or any rule promulgated under this chapter; (p) Subject to ss. 111.321, 111.322, and 111.335², been convicted of an offense the circumstances of which substantially relate to real estate practice.

Under Wis. Admin. Code § REEB 24.17(1) licensees may not violate any law the circumstances of which substantially relate to the practice of a real estate licensee. Additionally, Wis. Admin. Code §§ REEB 24.17(2) and (2m) provides that the Board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate, and may revoke a license based on a felony conviction.

Here, the Division has alleged and the undisputed facts establish that the Respondent violated Wisconsin statute and administrative rule governing real estate licensees by (1) violating a law the circumstances of which substantially relate to the practice of a real estate licensee based upon his criminal conviction; and (2) failing to respond to the Department within 30 days to a request for information. The Respondent was convicted of multiple felonies relating to his contact with the child of his real estate clients. Specifically, Respondent sent nude pictures of himself and engaged in sexually explicit online communications with the minor daughter of one of his real estate clients. He utilized his position as a real estate agent to perpetuate his criminal activity. Thus,

² Pursuant to these provisions in Chapter 111 of the Wisconsin Statutes, a prior conviction may not be considered in employment or licensing decisions unless the circumstances of the offense substantially relate to the circumstances of the particular job or licensed activity.

the circumstances of these convictions are substantially related to the practice of real estate. Real estate licensees are often alone with clients in homes and get to know their families and other personal information. Respondent took advantage of that relationship to commit his crimes and is a potential danger to the public if he is allowed to continue in this profession. Therefore, Respondent violated Wis. Admin. Code § REEB 24.17(1).

The Division also established based upon the uncontested facts that the Respondent failed to respond to the Division's repeated requests for information contrary to Wis. Admin. Code § REEB 24.17(5), which states that licensees "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 made multiple attempts to contact Respondent for information regarding the allegations against him. Respondent was released from custody on bond on August 4, 2021. The Department sent requests for information to Respondent at his mailing address of record on August 23, 2021, September 6, 2021, September 22, 2021, October 12, 2021, and December 10, 2021. The September 22, 2021 letter was sent via certified mail and the return receipt was signed by Respondent. Respondent did not respond to any of these requests for information. Therefore, Respondent violated Wis. Admin. Code § REEB 24.17(5).

Based on the facts of this case and that Respondent has made no argument to the contrary, I conclude that Respondent violated Wis. Admin. Code §§ REEB 24.17(1) and (5). As a result of the above violations, Respondent is subject to discipline pursuant to Wis. Stat. §§ 452.14(3)(L) and (p), as well as Wis. Admin. Code §§ REEB 24.17(2) and (2m).

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). "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).

The Division requests that Respondent Dylan J. Brannon's real estate salesperson license be revoked. The recommended discipline is consistent with the purposes articulated in *Aldrich* and with case law. Licensed real estate professionals work closely with clients, often in their clients' homes. They are entrusted with personal information and access to intimate parts of their clients' lives. With this considerable authority comes an equal degree of responsibility. Respondent violated this trust, engaging in inappropriate contact with the young daughter of his clients. Respondent's behavior is inconsistent with the expectations of real estate professionals. Respondent has proven he is a danger to the public when acting as a real estate professional. Respondent used his position to prey on a vulnerable minor to his own gratification and therefore breached his clients and the Board's trust in Respondent's capacity to practice real estate in Wisconsin.

In addition to ignoring the requirements of the law, Respondent has also ignored the Department's legitimate authority. Respondent did not respond to any of the Department's requests for information by the Department. Respondent's lack of accountability was further demonstrated in this proceeding, during which Respondent failed to answer the complaint and chose not to participate.

Accordingly, because the Board cannot assure the public of Respondent's competency to practice real estate in the state of Wisconsin, revocation of Respondent's credential is the necessary and appropriate response to the noted violations to protect the public from any further misconduct.

Although promoting rehabilitation is one of the purposes of discipline, the likelihood or efficacy of rehabilitation is questionable in the present matter. Respondent did not submit to the Board's authority and failed to answer the complaint against him. Revocation of Respondent's credential would coincide with the strong precedent that the requirements of licensure are to be taken seriously and that cooperation with licensing proceedings by the Board is required in all instances. *See, e.g. In the Matter of Disciplinary Proceedings Against Mike Mendez*, Order No. 0004882 (Aug. 18, 2016), *In the Matter of Disciplinary Proceedings Against Timothy D. Russell*, Order No. 0004883 (Aug. 18, 2016), *In the Matter of Disciplinary Proceedings Against Casey J. Ehler*, Order No. 0004756 (June 10, 2016), *In the Matter of Disciplinary Proceedings Against Tiffiny L. Harden*, Order No. 0005613 (Feb. 2, 2018).

In light of the facts of this case and the factors set forth in *Aldrich*, revocation of Respondent's real estate credential is warranted.

Costs

As a result of the Board revoking Respondent's credential, 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. 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 were deemed particularly relevant to the instant case in light of the factors determined in *Buenzli-Fritz*. 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 and then failing to prove those counts. Additionally, Respondent's conduct and violations are serious and a danger to the public. Respondent failed to cooperate with the Department's investigation. As a result, the Division sought a revocation of Respondent's credential. The revocation of a credential equates to the general absence of mitigating factors in this case. Respondent, by nature of being in default, has made no argument concerning whether costs should be assessed against him. 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, rather than spreading the costs among all licensees in Wisconsin.

Pursuant to Wis. Admin. Code § SPS 2.18 it is appropriate to assess costs against the Respondent.

ORDER


Accordingly, it is hereby ORDERED that Respondent Dylan J. Brannon's real estate salesperson license (number 90771-94) is REVOKED, effective on the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that should Respondent ever apply for any credential with the Board in the future, Respondent 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 October 26, 2022.

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By:



Kristin P. Fredrick
Administrative Law Judge