

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SUSAN M. FELLOWS, PETER OGDEN, AND
OGDEN & COMPANY, INC.,
RESPONDENTS.

:
:
: FINAL DECISION AND ORDER

:
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: **ORDER 0008503**
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Division of Legal Services and Compliance Case No. 18 REB. 141

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

Susan M. Fellows
Hales Corners, WI 53130

Peter Ogden
Pewaukee, WI 53072

Ogden & Company, Inc.
Milwaukee, WI 53202

Wisconsin Real Estate Examining Board
P.O. Box 8366
Madison, WI 53708-8366

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Wisconsin Real Estate Examining Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following Findings of Fact, Conclusions of Law, and Order.

FINDINGS OF FACT

1. Respondent Susan M. Fellows (Birth Year 1964) is licensed by the State of Wisconsin as a Real Estate Broker, having license number 44985-90, first issued on April 12, 1991, and current through December 14, 2024. Respondent's most recent address on file with the

Wisconsin Department of Safety and Professional Services (Department) is located in Hales Corners, Wisconsin 53130

2. Respondent Peter Ogden (Birth Year 1958) is licensed by the State of Wisconsin as a Real Estate Broker, having license number 26930-90, first issued on May 7, 1982, and current through December 14, 2024. Respondent's most recent address on file with the Department is located in Pewaukee, Wisconsin, 53072.

3. Respondent Ogden & Company, Inc. is licensed by the State of Wisconsin as a Real Estate Business Entity, having license number 9852-91, first issued on January 2, 1931 and current through December 14, 2024. Respondent Peter Ogden is identified in Department records as the responsible broker for Respondent Ogden & Company, Inc.

4. On December 3, 2018, the Department received a complaint from United Methodist Services of Wisconsin, Inc. (UMCS) alleging unauthorized property management account withdrawals by Ogden & Company, which was UMCS's property manager.

5. Previously, on November 28, 2017, UMCS gave notice to Ogden & Company that UMCS was not going to renew its contract, which ended on December 31, 2017.

6. At the time, UMCS owed Ogden & Company money for services rendered to UMCS by Ogden & Company, including by service providers retained by Ogden & Company, many of whom were subsidiaries of Ogden & Company. These subsidiary providers included PMD Maintenance, Above and Beyond Services, and SWAT Team Pest Control. According to Ogden & Company, the total owed by UMCS to Ogden & Company and other service providers was over \$128,000.

7. After UMCS gave its notice to Ogden & Company that it was terminating the contract, Ogden & Company's property management director, Respondent Susan Fellows, called UMCS's executive director to discuss how Ogden & Company was to pay for services rendered to UMCS by Ogden & Company and its affiliated companies.

8. According to Respondent Fellows, when she spoke with the UMCS executive director, the UMCS executive director told her to withdraw the needed money from the security deposit accounts and that UMCS would refund that account from its separate reserve accounts. UMCS's executive director died on December 19, 2017, and therefore this statement could not be corroborated.

9. Pursuant to Ogden & Company's contract with UMCS, Ogden & Company had established different bank accounts for UMCS's properties. The contract set forth that the money in the accounts was the property of UMCS, "subject to disbursement of expenses by [Ogden & Company]." The accounts were established in the name of UMCS with Ogden & Company as agent, and Ogden & Company had authority to make disbursements from those accounts pursuant to the parties' contract.

10. The Department reviewed bank statements provided by UMCS for three of the bank accounts established by Ogden & Company. Two of these accounts were labeled "Security Deposit Accounts."

11. None of these accounts were trust accounts and were not required to be, provided they were owner's accounts.

12. Pursuant to Wis. Admin. Code § REEB 18.031(5)(a), an owner's account is "an account *maintained by an owner of rental property* for depositing and disbursing any funds payable to or by the owner." (emphasis added).

13. Ogden & Company asserts that the accounts were owner's accounts. To support this assertion, they state that the money in the accounts belonged to UMCS, and that rent and security checks were made payable to UMCS, not to Ogden & Company.

14. Ogden & Company has not offered any evidence that UMCS maintained these accounts, however.

15. UMCS told the Department that no one at UMCS had access to or signatory authority over the accounts. The only access that UMCS had to the accounts was to review the monthly statements provided to them by Ogden & Company.

16. On December 22, 2017, Ogden & Company withdrew \$23,118 in funds from these three accounts, including the two security deposit accounts. The Department reviewed the contract between UMCS and Ogden & Company that terminated on December 31, 2017 ("the 2017 contract") as well as an earlier contract for a term from July 1, 2011 to June 30, 2012 ("the 2011 contract").

17. The 2011 contract stated that "[i]n the event of a shortfall of funds in the Operating Accounts, Owner shall advance funds from Owner's reserve Accounts or other sources as provided in, and subject to the limitations and restrictions in, the Governing Documents."

18. The 2017 contract stated that in the event of a shortfall in the operating account, "Agent (Ogden & Company) shall promptly inform the Owner of the deficit and the Owner shall then remit to Agent sufficient funds to cover the deficiency within 10 days."

19. As noted above, some of the vendors that Ogden & Company had contracted with to provide services to UMCS were subsidiaries of Ogden & Company. The 2017 contract did not disclose Ogden & Company's relationship with any of these subsidiaries, although it did provide that Ogden & Company was "authorized to engage, on behalf of the Owner, any entity that is an affiliate of the Agent." The 2011 contract specifically disclosed Ogden & Company's affiliation with one vendor, PMD Maintenance, but this language was removed from the 2017 contract.

20. There are no facts to suggest that any vendor providing services to UMCS under the contract, whether or not said vendor is affiliated with Ogden & Company, was not entitled to

the payments or had failed to provide the services for which they were paid. Respondents allege that more than \$105,000.00 remains unpaid by UMCS for services provided under the contract.

21. On September 6, 2019, the Department contacted Ogden & Company and requested a copy of any written authorization Ogden & Company received authorizing Ogden & Company to withdraw fees from the security deposit accounts. On September 23, 2019, Ogden & Company replied that they only received verbal authorization from UMCS, so no written documentation could be provided.

22. Respondents do not admit the allegations made by UMCS, whether contained herein or otherwise, but solely for the purpose of resolving of this matter they do not contest the entry of the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Examining Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14 and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. By the conduct described in the Findings of Fact, Respondents violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care.

3. As a result of the above violations, Respondents are subject to discipline pursuant to Wis. Stat. § 452.14(3)(L).

ORDER

1. The attached Stipulation is accepted.

2. Respondent Susan M. Fellows is REPRIMANDED.

3. Respondent Peter Ogden is REPRIMANDED.

4. Respondent Ogden & Company, Inc. is REPRIMANDED.

5. Within ninety (90) days from the date of this Order, Respondent Susan M. Fellows shall pay COSTS of this matter in the amount of \$310.

6. Within ninety (90) days from the date of this Order, Respondent Peter Ogden shall pay COSTS of this matter in the amount of \$310.

7. Within ninety (90) days from the date of this Order, Respondent Ogden & Company, Inc. shall pay COSTS of this matter in the amount of \$310.

8. Payment of costs (made payable to the Wisconsin Department of Safety and Professional Services) shall be sent to the Department Monitor at the address below:

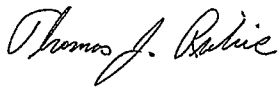
Department Monitor
Division of Legal Services and Compliance
Department of Safety and Professional Services
P.O. Box 7190, Madison, WI 53707-7190
Telephone (608) 266-2112; Fax (608) 266-2264
DSPSMonitoring@wisconsin.gov

Payment may also be submitted online via DSPS' Monitoring Case Management System at:
<https://dpsmonitoring.wi.gov/>

9. In the event Respondents violate any term of this Order, Respondents' licenses (nos. 44985-90, 26930-90 and 9852-91), or Respondents' right to renew their licenses, may, in the discretion of the Board or its designee, be SUSPENDED, without further notice or hearing, until Respondents have 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.

10. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE EXAMINING BOARD

by: 
A Member of the Board

4/13/2023
Date

STATE OF WISCONSIN
BEFORE THE REAL ESTATE EXAMINING BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

SUSAN M. FELLOWS, PETER OGDEN, AND
OGDEN & COMPANY, INC.,
RESPONDENTS.

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:
:

STIPULATION

ORDER 0008503

Division of Legal Services and Compliance Case No. 18 REB 141

Respondents Susan M. Fellows, Peter Ogden, and Ogden & Company, Inc., and the Division of Legal Services and Compliance, Department of Safety and Professional Services stipulate as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Legal Services and Compliance. Respondents consent to the resolution of this investigation by Stipulation.

2. Respondents understand that by signing this Stipulation, Respondents voluntarily and knowingly waive the following rights:

- the right to a hearing on the allegations against Respondents, at which time the State has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against Respondents;
- the right to call witnesses on Respondents' behalf and to compel their attendance by subpoena;
- the right to testify on Respondents' 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 Respondents under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. Respondents are aware of Respondents' right to seek legal representation and have been provided an opportunity to obtain legal counsel before signing this Stipulation. Respondents are represented by Attorney Eric McLeod.

4. Respondents agree to the adoption of the attached Final Decision and Order by the Wisconsin Real Estate Examining Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondents waive all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Legal Services and Compliance for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.


6. The parties to this Stipulation agree that the attorney or other agent for the Division of Legal Services and Compliance and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of Respondents, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondents are informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Legal Services and Compliance joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Susan M. Fellows, Respondent
Hales Corners, WI 53130
Credential No. 44985-90

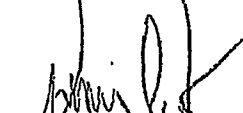
Date



Peter Ogden, Respondent
Pewaukee, WI 53072
Credential No. 26930-90

Date

2/15/23



Ogden & Company, Inc., Respondent
By: Peter Ogden, Responsible Licensee
Milwaukee, WI 53202
Credential No. 9852-91

Date

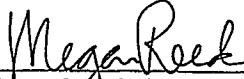
2/15/23



Eric McLeod, Attorney for Respondent
P.O. Box 1379
33 E. Main St. #300
Madison, WI 53703

2-20-23

Date



Megan Reed, Attorney
Division of Legal Services and Compliance
P.O. Box 7190
Madison, WI 53707-7190

02/21/2023

Date