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**Before the
State Of Wisconsin
Real Estate Examining Board**

In the Matter of the Disciplinary Proceedings
Against Courtney K. Kelbel and WI Realty
Services LLC, Respondents.

FINAL DECISION AND ORDER

Order No. **ORDER 0008504**

Division of Legal Services and Compliance Case No. 18-REB 079

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 13th day of April, 2023.

A handwritten signature in black ink, appearing to be "R. J. [unclear]".

Member
Real Estate Examining Board



Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS

In the Matter of Disciplinary Proceedings Against
Courtney K. Kelbel and WI Realty Services, LLC,
Respondents.

DHA Case No. SPS-22-0064
DLSC Case No. 18 REB 079

PROPOSED DECISION AND ORDER

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

Courtney K. Kelbel
2189 N. Route 83 #282
Round Lake, IL 60073

WI Realty Services LLC
4875 Easy St. Suite #5
Hartland, WI 53029

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 on October 20, 2022 when the Department of Safety and Professional Services (Department), Division of Legal Services and Compliance (Division), filed and served a Notice of Hearing and Complaint against the Respondents Courtney K. Kelbel and WI Realty Services, LLC (Respondents). The Division served the Notice of Hearing and Complaint by sending a copy to the Respondents' addresses on file with the Department by both certified and regular mail, consistent with Wis. Admin. Code § SPS 2.08. Respondents did not file an Answer within 20 days of service as required by Wis. Admin. Code § SPS 2.09(4).

A telephone prehearing conference was held on December 9, 2022, Administrative Law Judge (ALJ) Andrea Brauer presiding. Ms. Kelbel appeared on behalf of herself and WI Realty Services, LLC. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.09 based on the Respondents' failure to timely answer. The ALJ denied the motion and instead ordered that: (1) the Division serve another copy of the Complaint and Notice of Hearing on the Respondents at a new address provided by Ms. Kelbel; and (2) the Respondents file an Answer to the Division's Complaint no later than January 2, 2023. The Division served the documents on December 12, 2022 as ordered, but the Respondents did not file an Answer.

On January 18, 2023, the ALJ issued a Notice of Default and Order, finding the Respondents in default based on their failure to file an Answer and ordering the Division to file a recommended proposed decision and order. The Division timely filed its recommended proposed decision and order on February 13, 2023.

FINDINGS OF FACT

Facts Related to the Alleged Violations

Findings of Facts 1-20 are as set forth in the Division's Complaint against Respondents filed in this matter.

1. Respondent Courtney K. Kelbel, a/k/a Courtney K. Laur, (Birth Year 1983) was licensed by the State of Wisconsin as a real estate broker, having license number 57927-90, first issued on February 27, 2015 and expired as of December 15, 2018, and as a real estate salesperson, having license number 79487-94, first issued on November 13, 2014, and expired as of December 15, 2016. Respondent's most recent address on file with the Wisconsin Department of Safety and Professional Services (Department) is in Milwaukee, Wisconsin 53203.

2. Pursuant to Wis. Stat. § 440.08(3), Respondent Courtney K. Kelbel retains the right to renew her real estate broker's license until December 14, 2023.

3. Respondent WI Realty Services, LLC is licensed by the State of Wisconsin as a real estate business entity, having license number 937549-91, first issued on June 4, 2014 and expired as of December 15, 2018. Respondent's most recent address on file with the Department is in Hartland, Wisconsin 53029.

4. Ms. Kelbel is identified in Department records as the responsible licensee in charge of WI Realty Services, LLC.

5. Pursuant to Wis. Stat. § 440.08(3), WI Realty Services, LLC retains the right to renew its real estate business entity license until December 14, 2023.

6. On July 12, 2018, the Department received a complaint alleging that the Respondents failed to return the Complainant's earnest money despite numerous attempts by Complainant to contact Respondents. The Division of Legal Services and Compliance (DLSC) subsequently opened Case Number 18 REB 079 for investigation.

7. In 2018, Respondents represented the seller in a real estate transaction in Milwaukee, Wisconsin.

8. On March 30, 2018, Complainant submitted an offer for the subject property, which was accepted. Pursuant to the offer, Complainant mailed the earnest money to Respondents.

9. On June 6, 2018, a Cancellation Agreement and Mutual Release was signed by all parties and sent to Respondents.

10. Complainant made numerous unsuccessful attempts to contact Respondents regarding the return of earnest money to Complainant.

11. On July 12, 2018, Respondents returned the earnest money to Complainant, the same day the complaint was filed with the Department.

12. On October 2, 2018, the Department mailed a letter to Respondents at WI Realty Services, LLC's address of record to request a response to the complaint. No response was received.

13. On October 9, 2018, the Wisconsin Office of Lawyer Regulation (OLR) suspended Ms. Kelbel's attorney license for failing to respond to an investigation, failing to pay dues, and failing to file a trust account verification.

14. The OLR investigation of Ms. Kelbel involved the following real estate matters:

- a. On September 25, 2017, S.Z. filed a complaint with OLR related to Respondent's representation of S.Z. in a real estate matter. Respondent did not cooperate with OLR's investigation of the complaint.
- b. On April 2, 2018, D.U. filed a grievance with OLR related to Ms. Kelbel's representation of D.U. in a real estate matter. D.U. alleged that Ms. Kelbel failed to properly handle a cancellation of debt form. Ms. Kelbel did not cooperate with OLR's investigation of the grievance.
- c. On June 27, 2018, V.L.C. filed a grievance with OLR related to Ms. Kelbel's representation of V.L.C. in a real estate matter. V.L.C. alleged that Ms. Kelbel failed to properly list a property. Ms. Kelbel did not cooperate with OLR's investigation of the grievance.

15. Between June 6, 2019, and September 10, 2019, the Department made numerous attempts to contact Respondents for a response to the investigation. No response was received.

16. On July 9, 2019, Ms. Kelbel was charged with felony possession of narcotic drugs, misdemeanor possession of cocaine, and misdemeanor possession of drug paraphernalia in Racine County Circuit Court Case No. 19 CF 882.

17. On October 22, 2019, the Wisconsin Supreme Court entered a default judgment against Ms. Kelbel in the OLR matter. Ms. Kelbel's attorney license was suspended for professional misconduct.

18. On February 15, 2021, Ms. Kelbel was convicted of misdemeanor possession of cocaine in Racine County Circuit Court Case No. 19 CF 882.

19. Ms. Kelbel did not report the above conviction to the Department.

20. The Wisconsin Department of Financial Institutions' records show that WI Realty Services, LLC has been delinquent since April 1, 2019.

Facts Related to Default

21. The Division served the Complaint and Notice of Hearing in this matter on the Respondents on October 20, 2022 by both certified and regular mail at Respondents' addresses of record with the Department consistent with Wis. Admin. Code § SPS 2.08. The Notice of Hearing informed the Respondents: "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."

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

23. On December 9, 2022, the ALJ held a telephone prehearing conference. Ms. Kelbel appeared on behalf of herself and WI Realty Services, LLC. The Division moved for default pursuant to Wis. Admin. Code § SPS 2.09 based on the Respondents' failure to timely file an Answer. The ALJ denied the motion and instead: (1) directed the Division to serve another copy of the Complaint and Notice of Hearing on Respondents at a new address provided by Ms. Kelbel; and (2) informed the parties that the Respondents' Answer deadline would be extended to January 2, 2023. The ALJ also informed Ms. Kelbel that a failure to answer could result in default judgment being entered against the Respondents.

24. On December 12, 2022, the Division served the Complaint and Notice of Hearing on Respondents, by both certified and regular mail at the new address provided by Respondent Kelbel.

25. On December 14, 2022, the ALJ issued an Order and Notice of Prehearing Conference, ordering Respondents to file an Answer to the Division's Complaint no later than January 2, 2023 and scheduling a second prehearing conference for January 23, 2022. The Order stated, "If the Respondents do not timely file an Answer, they will be found in default and an order for default judgment will be entered unless they show good cause for failing to Answer."

26. Respondents did not file an Answer, and they have not shown good cause for their failure to do so.

27. On January 18, 2023, the ALJ issued a Notice of Default and Order finding Respondents in default; directing that an order be entered on the basis of the Complaint and other evidence pursuant to Wis. Admin. Code § SPS 2.14; cancelling the January 23, 2022 prehearing conference; and ordering the Division to file and serve a recommended proposed decision and order no later than February 17, 2023.

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

DISCUSSION

Jurisdiction

The Wisconsin Real Estate Examining Board (Board) has jurisdiction over the Respondents because the Respondents retain a right to renew their licenses until December 14, 2023 by paying a fee and showing proof of continuing education. Wis. Admin. Code § REEB 12.04(1); Wis. Stat. § 440.08(3). The Board is therefore authorized to issue the below order, which takes action against their right to renew the licenses. Wis. Stat. § 452.14(3)-(4). The ALJ has authority to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1) and pursuant to Wis. Admin. Code § SPS 2.10(2).

Default

The Department properly served the Notice of Hearing and Complaint on the Respondents by mailing copies to them at their last known addresses. Wis. Stat. § 440.11(2) and Wis. Admin. Code § SPS 2.08(1). The Respondents failed to file an Answer within 20 days from the date of service of the complaint as required by Wis. Admin. Code § 2.09(4). Following the prehearing conference, the Division served additional copies on the Respondents at a new address provided by Ms. Kelbel, and the Respondents were granted additional time to answer. However, the Respondents still failed to answer. They are therefore in default pursuant to Wis. Admin. Code § SPS 2.14, and the Board “may make findings and enter an order on the basis of the complaint and other evidence.” The allegations in the Complaint are also deemed admitted pursuant to Wis. Admin. Code § SPS 2.09(3).

Violations

The Respondents committed several violations, which are grounds for discipline. First, they violated Wis. Admin. Code § REEB 24.17(5) by failing to respond within 30 days to numerous communications from the Department in 2018 and 2019, which requested a response to the consumer complaint filed against the Respondents.

The Respondents also violated rules of practice through their conduct in the 2018 real estate transaction. It is undisputed that on March 30, 2018, Respondents received earnest money from a buyer. On June 6, 2018, the parties mutually agreed to cancel the transaction and to have the earnest money returned to the buyer. The buyer made numerous attempts to have Respondents return the money. It was not until a complaint was filed with the Department, a month after the transaction was cancelled, that Respondents returned the money, on July 12, 2018. Respondents have not offered any explanation for their failure to return the earnest money when it was requested by the parties. By failing to account for or return the earnest money in a reasonable time, Respondents violated Wis. Admin. Code § REEB 24.03(2)(b) by failing to act to protect the public against fraud, misrepresentation and unethical practices. They also violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care. *See* Wis. Stat. § 452.133(4m)(a) (extending the firm’s duties to each individual licensee associated with the firm).

Finally, because Ms. Kelbel never reported her 2021 misdemeanor possession of cocaine conviction to the Department, she also violated Wis. Admin. Code § REEB 24.17(1), which requires licensees to report a conviction within 48 hours after entry of the judgment of conviction.

As a result of the above violations, Ms. Kelbel is subject to discipline pursuant to Wis. Stat. § 452.14(3)(h), (i), (k), and (L). In addition, Wis. Stat. § 452.14(4) provides that the Board may discipline a real estate business entity if its business representative is guilty of any act or omission that would be cause for refusing a broker's license to that individual. Pursuant to Wis. Stat. § 452.03, the Board may refuse a broker's license to an individual who it finds incompetent to transact business in a manner that safeguards the interests of the public. Here, Ms. Kelbel's conduct would be cause for refusing her a broker's license pursuant to Wis. Stat. § 452.03. WI Realty Services, LLC is therefore subject to discipline pursuant to Wis. Stat. § 452.14(4).

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). The Division requests that Ms. Kelbel's right to renew her real estate broker credential and WI Realty Services-LLC's right to renew its real estate business entity license be revoked. 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 revocation is appropriate. *Gilbert v. State Medical Examining Bd.*, 119 Wis. 2d 168, 189-90, 349 N.W.2d 68 (1984).

Even though Respondents' credentials are currently expired, it is appropriate and necessary to impose discipline. Wisconsin Admin. Code § REEB 12.04(1) and Wis. Stat. § 440.08(3)(a) allow the holder of a credential to restore the credential even after the expiration by simply paying the application renewal fee and a late renewal penalty of \$25. These provisions have been reasonably interpreted by the Department to mean that credential holders retain a right to automatically renew their credentials within five years of expiration by simply paying the required fees and completing any required continuing education. Thus, Respondents have an automatic right to renew these licenses until December 14, 2023. The same reasons justifying discipline in cases in which the individuals are currently licensed apply to this case, as Respondents may renew their credentials at any time. *See In the Matter of the Disciplinary Proceedings Against Todd Edmonds*, LS-0002317 (Feb. 26, 2013), *citing In the Matter of Disciplinary Proceedings Against Paul S. George, Dean K. George, and George Auction Services*, LS-9804151-AUC (Nov. 18, 1999).

Licensed real estate professionals and real estate business entities are entrusted to protect personal information and personal property and hold large amounts of money. With this considerable authority comes an equal degree of responsibility. Contrary to this, Respondents failed to return funds that belonged to a party to a transaction and did not return them until that

person filed a complaint with the Department. Respondents further failed to cooperate with the Department's investigation and with this proceeding. Respondents never provided any response to the Department's requests for information and did not provide an Answer to the Complaint. This behavior demonstrates Respondents' lack of respect for the law, public safety, and the licensing authority governing the profession.

Accordingly, the Board cannot assure the public of Respondents' competency to practice real estate in Wisconsin. Therefore, revocation of Respondents' right to renew their credentials is the necessary and appropriate response to the noted violations to protect the public from any further misconduct.

Promoting rehabilitation is one of the purposes of discipline; however, rehabilitation is unlikely here. Because Respondents will not submit to the Board's authority, it is contrary to public safety for Respondents to have a right to renew their credentials. Notably, Respondents have failed to present any mitigating factors as to why they should be trusted to practice real estate or that rehabilitation would be possible. Revocation of Respondents' credentials 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 Tiffany 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 Respondents' right to renew their real estate credentials is warranted.

Costs

As a result of the Board revoking Respondents' credentials, the Board is vested with discretion concerning whether to assess all or part of the costs of this proceeding against Respondents. *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. Boards have 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 are 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, Respondents' conduct and violations are serious and a danger to the public. Respondents failed to cooperate with the Division's investigation, failed to notify the Department of a criminal conviction, failed to act to protect the public against unethical

practices, and failed to provide brokerage services with reasonable skill and care. As a result, the Division sought a revocation of Respondents' credentials. The revocation of a credential equates to the general absence of mitigating factors in this case. Respondents, by nature of being in default, have made no argument concerning whether costs should be assessed against them. When Respondents fail to argue a position, the Division is not obliged to make the argument for them. 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 Respondents to pay the costs of this proceeding which resulted in significant discipline, rather than spreading the costs among all licensees in Wisconsin.

I find that 100% of the costs of this proceeding shall be assessed against Respondents and that the amount of costs be determined pursuant to Wis. Admin. Code § SPS 2.18.

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the Respondents pursuant to Wis. Admin. Code § REEB 12.04(1) and Wis. Stat. § 440.08(3) because they retain a right to renew their licenses until December 14, 2023 by paying a fee and showing proof of continuing education.

2. The ALJ is authorized to preside over this disciplinary proceeding in accordance with Wis. Stat. § 227.46(1) and pursuant to Wis. Admin. Code § SPS 2.10(2).

3. The Respondents are in default pursuant to Wis. Admin. Code § SPS 2.14 for failing to timely file an Answer, and the Board may make findings and enter an order on the basis of the Complaint and other evidence. The allegations in the Complaint are also deemed admitted pursuant to Wis. Admin. Code § SPS 2.09(3).

4. The Respondents violated Wis. Admin. Code § REEB 24.17(5) by failing to respond to several Department requests for information within 30 days of the requests.

5. The Respondents violated Wis. Admin. Code § REEB 24.03(2)(b) by failing to act to protect the public against fraud, misrepresentation, and unethical practices.

6. The Respondents violated Wis. Stat. § 452.133(1)(b) by failing to provide brokerage services with reasonable skill and care. *See also* Wis. Stat. § 452.133(4m)(a).

7. Ms. Kelbel violated Wis. Admin. Code § REEB 24.17(1) by failing to report a conviction to the Department within 48 hours after entry of the judgment of conviction.

8. As a result of the above violations, Ms. Kelbel is subject to discipline pursuant to Wis. Stat. § 452.14(3)(h), (i), (k), and (L).

9. Ms. Kelbel's conduct would be cause for the Board to refuse her a real estate broker license pursuant to Wis. Stat. § 452.03 because it demonstrates incompetency to transact business in a manner that safeguards the interests of the public. As a result, WI Realty Services, LLC is subject to discipline pursuant to Wis. Stat. § 452.14(4).

10. Revocation of the Respondents' right to renew their licenses is warranted based on the Respondents' violations and the purposes of discipline as articulated in Wisconsin case law.

11. Assessment of the full costs of the proceedings against the Respondents is appropriate and warranted pursuant to Wis. Stat. § 440.22(2).

ORDER

Accordingly, it is hereby ORDERED that the right to renew Respondent Courtney K. Kelbel's real estate broker license (number 57927-90) and Respondent WI Realty Services LLC's real estate business entity license (number 937549-91) are REVOKED, effective on the date the Final Decision and Order is signed by the Board.

IT IS FURTHER ORDERED that should Respondents ever apply for any credential with the Board in the future, Respondents 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 March 7, 2023.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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Andrea E. Brauer
Administrative Law Judge