

File #: 31969/TK

STATE OF MINNESOTA
COMMISSIONER OF COMMERCE

**CONSENT
CEASE AND DESIST
ORDER**

In the Matter of
Ryan William Marvin
Real Estate Broker License Number 40187636,
and Hayden & Company LLC, dba Renters Warehouse
Real Estate Company License Number 40092193

To: Hayden & Company LLC, dba Renters Warehouse
Ryan William Marvin
C/O David M. Aafedt
Winthrop & Weinstine, P.A.
Capella Tower – Suite 3500
225 South Sixth Street
Minneapolis, Minnesota 55402

1. Commissioner of Commerce Mike Rothman (Commissioner) has advised Ryan William Marvin and Hayden & Company LLC, dba Renters Warehouse (collectively, "Respondents") that he is prepared to commence formal action pursuant to Minn. Stat. § 45.027 (2014), and other applicable law, against Respondents' Real Estate Broker license and Real Estate Company license, based on multiple instances of each of the following allegations:

- a. Respondents failed to deposit all trust funds into the real estate trust account, in violation of Minn. Stat. § 82.75 subd. 1 (2014). Specifically, Respondents used trust funds to offset commissions and other fees due to Respondents by a third-party. Respondents, while taking possession of a tenants' security deposits, withheld a portion of those fees for themselves, then required the landlord to supplement those trust funds;

- b. Respondents sold and solicited multiple insurance products to Minnesota residents without a license, in violation of Minn. Stat. § 60K.32 (2014);
- c. Respondents charged and accepted monthly insurance fees without the required license and without providing the required disclosures, in violation of Minn. Stat. §§ 60K.46 and 60K.48 (2014);
- d. Respondents failed to disclose the identity of the insurer, agents, or agency on their advertisements, in violation of Minn. R. 2790.0800, subd. 1 (2013);
- e. Respondents failed to disclose the deductible on an advertisement, which identifies the premiums and benefits payable, in violation of Minn. R. 2790.0500 (2013);
- f. Respondents charged and collected more than the statutorily allowed amount for Non-Sufficient Funds (NSF) fees (e.g., \$65 charged and collected versus \$30 allowed by Minnesota law), and failed to include a provision notifying the issuer of the check that civil penalties may be imposed for nonpayment, as defined in Minn. Stat. § 604.113 subd. 2(a) (2014), in violation of Minn. Stat. § 82.82 subd. 1 (f) (2014);
- g. Respondents failed to provide a description of the real property involved in Property Management Agreements and Tenant Placement Agreements (Listing Agreements), in violation of Minn. Stat. § 82.66 subd. 1 (b) (2) (2014);
- h. Respondents failed to provide the list price and any terms required by the seller in Listing Agreements, in violation of Minn. Stat. § 82.66 subd. 1 (b) (3) (2014);

- i. Respondents included a provision for the automatic renewal of Listing Agreements, in violation of Minn. Stat. § 82.66 subd. 1 (c) (2014);
- j. Respondents failed to provide the following notice in not less than ten-point boldface type immediately preceding any provision of the Listing Agreements relating to compensation of the licensee: "NOTICE: THE COMPENSATION FOR THE SALE, LEASE, RENTAL, OR MANAGEMENT OF REAL PROPERTY SHALL BE DETERMINED BETWEEN EACH INDIVIDUAL BROKER AND THE BROKER'S CLIENT." in violation of Minn. Stat. § 82.66 subd. 1 (b) (8) (2014);
- k. Respondents failed to provide a notice stating that after the expiration of the listing agreement, the seller will not be obligated to pay the licensee a fee or commission if the seller has executed another valid listing agreement pursuant to which the seller is obligated to pay a fee or commission to another licensee for the sale, lease, or exchange of the real property in question, in violation of Minn. Stat. § 82.66 subd. 1 (b) (11) (2014);
- l. Respondents failed to include a definite expiration date in Listing Agreements, in violation of Minn. Stat. § 82.66 subd. 1 (b) (1) (2014);
- m. Respondent Ryan William Marvin failed to supervise adequately the activities of the broker's salespersons and employees, in violation of Minn. Stat. § 82.73 subd. 3 (a) (2014).

2. The Department recognizes that the Respondents took certain steps to correct some of the above activity prior to the commencement of its investigation.

3. Respondents acknowledge that they have been advised of their rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any

adverse determination after a hearing, and Respondents hereby waive those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings.

4. Respondents have agreed to informal disposition of this matter without a hearing as provided under Minn. Stat. § 14.59 (2014) and Minn. R. 1400.5900 (2013).

5. The following Order is in the public interest.

NOW, THEREFORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027 (2014), that Respondent Hayden & Company, LLC, dba Renters Warehouse shall pay to the state of Minnesota a civil penalty in the amount of \$150,000. \$50,000 of the above civil penalty shall be stayed on the condition that Respondents comply with the terms of this Order. Should it be found that either Respondent has failed to comply with any provision of this Order, the remainder of the \$150,000 civil penalty shall be immediately due and payable to the state of Minnesota. In accordance with the provisions of Minn. Stat § 45.027, the Commissioner may pursue additional sanctions for any violations of Chapter 82 or other applicable law, in addition to any violations of this Order.

Pursuant to Minn. Stat. § 16D.17 (2014), the Commissioner may file and enforce any unpaid civil penalty imposed by this Order as a judgment against Respondents in district court without further notice or additional proceedings. In addition, pursuant to Minn. Stat. § 16D.13 (2014), Respondents are hereby notified that 30 days after the effective date of this Consent Order, or in the event of a lift of stay, 30 days after the effective date of the Order Lifting Stay, simple interest computed in accordance with Minn. Stat. § 16D.13, subd. 2 (2014) will begin to accrue on any civil penalty imposed against Respondents.

FURTHERMORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027 (2014), Respondents shall implement a process to pay restitution to all Minnesota

property owners or residents (Residents) who have paid non-sufficient funds (NSF) fees in excess of the statutory limit of \$30 within ninety (90) days of the effective date of this Order. The payments shall be made directly to the payer of those excess NSF fees which were collected during the 3-year period prior to the date of this Order. The NSF fees in excess of the statutory limit total at a minimum of \$45,000.

Moreover, the restitution process shall consist of the following elements:

- A. All Residents shall receive a full refund of all NSF fees paid in excess of the statutorily allowed amounts.
- B. Respondents shall send a Notice by first class mail to all Residents within thirty (30) days of establishing the restitution process. The Notice shall inform the resident of the reason for and details of the process and contain a check for the full amount owed.
- C. If the Notice and check is returned as undeliverable, Respondents shall make reasonable efforts to locate the Resident using the United States Post Office's National Change of Address or a similar service/product to locate a Resident.
- D. Throughout the process described herein, Respondents shall make all relevant records available to the Department, and shall provide progress reports as may be requested by the Department from time to time.
- E. Respondents shall submit reports to the Commissioner that shall include the following information:
 - 1. The identity of each Resident to whom it has mailed the Notice and restitution check, including the Resident's last known address and date(s) of NSF charge(s);
 - 2. The identity of each Resident to whom it sent the Notice and each Resident for whom the Notice was returned as undeliverable;

3. For each Resident for whom the Notice was returned as undeliverable, proof of Respondent's reasonable efforts to locate the Resident;
4. The identity of each Resident that received a refund in the process; and,
5. Respondents shall maintain proof of mailing for each Notice, and financial records of the refund received in the Process;

F. All attempts to reach Residents shall be completed by December 31, 2015. By no later than January 31, 2016, proof of all restitution payments shall be provided to the Commissioner and any amounts of the NSF fee restitution that have not been paid to Residents because they could not be located shall be paid to the state of Minnesota General Fund.

FURTHERMORE, IT IS HEREBY ORDERED, that Respondents shall for a period of three months from the effective date of this Order continue to pay all premiums for its customers who purchased insurance coverage or until such time as such programs are in full compliance with Minnesota law.

FURTHERMORE, IT IS HEREBY ORDERED, that Respondents, or their employees or agents, shall, to the extent that they seek to engage in activities requiring an insurance producer license in the state of Minnesota, become licensed pursuant to Minnesota Statutes Chapter 60K.

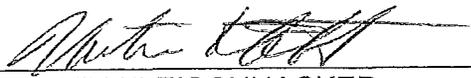
FURTHERMORE, IT IS HEREBY ORDERED, Respondents shall pay investigative costs pursuant to Minn. Stat. § 45.027, subd. 1(8) (2014).

FURTHERMORE, IT IS HEREBY ORDERED, pursuant to Minn. Stat. § 45.027 (2014), Respondents shall CEASE AND DESIST from violating any laws, rules, or orders related to the duties and responsibilities entrusted to the Commissioner.

This Order shall be effective upon signature on behalf of the Commissioner.

Dated: 9/11/2015.

MIKE ROTHMAN
Commissioner

By: 
MARTIN FLEISCHHACKER
Assistant Commissioner
Enforcement Division

85 7th Place East, Suite
St. Paul, MN 55101

CONSENT TO ENTRY OF ORDER

The undersigned, Ryan William Marvin, individually, and on behalf of Hayden and Company LLC, dba Renters Warehouse (collectively referred to herein as "Respondents"), states that he has read the attached Consent Order; that he knows and fully understands its contents and effect; that he is authorized to execute this Consent to Entry of Order; that he acknowledges he has been advised of his rights to a hearing in this matter, to present argument to the Commissioner and to appeal from any adverse determination after a hearing, and he hereby expressly waives those rights. Respondents further acknowledge that they have been represented by legal counsel throughout these proceedings; and he consents to entry of this Order by the Commissioner. It is further understood that this Consent Order constitutes the entire settlement agreement between the parties, there being no other promises or agreements, either express or implied.

**Hayden and Company LLC dba
Renters Warehouse**

By: RW Marvin
Ryan William Marvin, individually, and on
behalf of Hayden and Company LLC dba
Renters Warehouse

Its: Broker

STATE OF Minnesota

COUNTY OF Carver

Signed or attested before me on September 11, 2015 (date)

by Ryan Marvin (name(s) of person(s))

Tiffany Deane Haun

(Signature of notary officer)

Notary Public

Title (and Rank)

My Commission expires: January 31, 2019

(stamp)

