

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Revocation
of the Real Estate License of
Wesley H. Miller

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Kathleen D. Sheehy, Administrative Law Judge, on March 23, 2004, at the Office of Administrative Hearings in Minneapolis. The record closed that day.

Wayne L. Sather, Esq., Minnesota Department of Revenue, Mail Station 2220, 600 North Robert Street, St. Paul, Minnesota 55146-2220, appeared for the Department of Revenue (Department).

Wesley H. Miller, P.O. Box 450, 17396 Snowshoe Drive, Ironton, Minnesota 56455, appeared on his own behalf without counsel

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Revenue will make the final decision after a review of the record. The Commissioner may adopt, reject, or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner of Revenue shall not be made until this report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this report to file exceptions and present argument to the Commissioner of Revenue. Parties should contact Wayne L. Sather, Attorney, Legal Services Section, Mail Station 2220, St. Paul, MN 55146-2220 or 651/296-8228. The record closes upon the filing of exceptions to the report, or upon the expiration of the deadline for doing so.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

Should Mr. Miller's real estate license be revoked for failure to pay individual income taxes due and for failure to file income tax returns for the years 2000-2002?

The Administrative Law Judge concludes that Mr. Miller's license should be revoked.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Wesley Miller holds real estate agent license No. 20250147 issued by the Department of Commerce.
2. Miller failed to file income tax returns for the year 1999. Based on 1099 forms received by the Department that reported compensation paid to Miller for services provided as a non-employee, the Department calculated the amount of income tax due for that year. The amount due for tax, penalties, and interest is \$1,869.45 as of March 23, 2004.^[1]
3. Miller has not filed income tax returns for the years 2000, 2001, or 2002.^[2]
4. The Department issued a Final Notice and Demand for Payment of the amount due for 1999 to Mr. Miller on June 26, 2003.^[3] The Department also filed a state tax lien on Miller's property in Crow Wing County on October 15, 2003.^[4] Miller did not seek administrative review of the tax lien, although he received notice of his right to do so.^[5]
5. The Department issued a Notice of Intent to Revoke License on October 31, 2003.^[6] The notice informed Miller that the Department would notify the Department of Commerce to revoke his real estate agent license unless he paid the amount due for 1999 and filed the missing returns by December 1, 2003.
6. Miller responded with a letter dated November 24, 2003, in which he maintained that he had no obligation to file state income tax returns because he had no obligation to file federal returns for the years at issue. He also requested a hearing.^[7]
7. The Notice and Order for Hearing in this matter were issued on January 21, 2004.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Department and the Administrative Law Judge have authority to consider the issues set out in the Notice and Order for Hearing and to take the action proposed under Minn. Stat. §§ 14.50 and 270.72, subd. 1.

2. Minn. Stat. § 270.72, subd. 3, provides that if an applicant [or licensee] requests a contested case hearing, the hearing must be held within 45 days of the date the Commissioner refers the case to the Office of Administrative Hearings. In addition, the applicant must receive 20 days' notice in writing of the time and place of the hearing and the allegations.

3. The hearing in this case did not take place within 45 days of the date the Commissioner referred the case to the Office of Administrative Hearings. The Respondent did not object to the schedule. The Administrative Law Judge concludes that this procedural error was harmless and did not prejudice the Respondent in any way. The Respondent received more than the required 20 days' written notice of the time and place of the hearing and the substance of the allegations.

4. The Department gave proper notice of the hearing in this matter to the Respondent and has complied in all other respects with the substantive and procedural requirements of law and rule.

5. Minn. Stat. § 270.72, subd. 1, provides as follows:

The state or a political subdivision of a state may not issue, transfer, or renew, and must revoke a license for the conduct of a profession, occupation, trade or business if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, penalties, or interest. The commissioner may not notify the licensing authority unless the applicant taxpayer owes \$500 or more in delinquent taxes or has not filed returns. If the applicant taxpayer does not owe delinquent taxes but has not filed returns, the commissioner may not notify the licensing authority unless the taxpayer has been given 90 days' written notice to file the returns or show that the returns are not required to be filed.

6. The Respondent has received the required 90 days' written notice to file the missing returns or to show that he is not required to file the returns.

7. The Respondent owes \$1,869.45 in delinquent taxes, penalties and interest for 1999 and has failed to file income tax returns for the years 2000, 2001, and 2002. The Respondent has not contested his liability for the delinquent taxes, penalties and interest and has failed to show that he is not required to file the missing returns.

8. Department has met the statutory requirements for notifying the Commissioner of Commerce that Respondent's real estate license should be revoked.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: that the Commissioner of Revenue issue a Notice of License Revocation to the Minnesota Department of Commerce indicating that the Department of Commerce must revoke the Respondent's real estate license.

Dated this 25th day of March, 2004.

/s/ Kathleen D. Sheehy

KATHLEEN D. SHEEHY
Administrative Law Judge

Reported: Tape Recorded, one tape.

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Commissioner is required to serve the final decision upon each party and the Administrative Law Judge by first-class mail.

MEMORANDUM

The Respondent contends that because he has an ongoing dispute with the Internal Revenue Service concerning his obligations to file federal income tax returns, he has established that he is not obligated to file state income tax returns and that the Department of Revenue consequently may not revoke his real estate agent's license for failure to file state returns. The Respondent has not identified the basis for his claim that he is not obligated to file federal returns, except to cite "all 54,000 pages and 3,400,000 words" of the Internal Revenue Code as evidence of his filing and taxpaying obligations. State law requires Minnesota residents to pay taxes upon their taxable income for each year.^[8] The existence of a dispute with the IRS, whatever the basis for it might be, is insufficient to demonstrate that the Respondent is not required to file returns in Minnesota.

The Respondent makes a similar argument based on instructions posted on the Department's Income Tax website, and in the Income Tax Instruction booklet, which provide generally that if residents do not have to file a federal return, they are not required to file in Minnesota. The Respondent has simply not established that he is not required to file a federal return, so he has no legal or factual basis for arguing that he is not required to file in Minnesota.

Finally, the Respondent contends that because he disputes his 1999 tax liability, the tax clearance statute precludes revocation of his license. The statute provides that the definition of delinquent taxes does not include a tax liability if “an administrative or court action which contests the amount or validity of the liability has been filed or served.”^[9] There is no evidence that there is any administrative or court action pending in which the Respondent is contesting the Department’s calculation of his 1999 tax obligation, or indeed, that the Respondent has taken any action whatsoever to contest his liability for that year. This proceeding, although administrative in nature, is one to determine whether his real estate agent’s license should be revoked, and the Respondent’s statements here that he disputes the liability are ineffective to establish that he has contested his \$1,869.45 tax obligation.

K.D.S.

^[1] Ex. 6; Testimony of Diane Atkins. The amount due also includes \$60 for lien fees.

^[2] Testimony of Diane Atkins.

^[3] Ex. 1.

^[4] Ex. 3.

^[5] *Id.*

^[6] Ex. 4.

^[7] Ex. 5.

^[8] Minn. Stat. § 290.03.

^[9] Minn. Stat. § 270.72, subd. 2(b). See also Minn. Stat. § 82.27, subd. 7(b)(2) (same).