

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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ORCS  
File  
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STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	
CAL E. BOWE,	:	FINAL DECISION
a/k/a CALLEN E. BOWE,	:	AND ORDER
a/k/a GOOD SENSE REALTY,	:	
	:	
RESPONDENT	:	

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The State of Wisconsin, Real Estate Board, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes 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 Board.

The rights of a party aggrieved by this Decision to petition the Board for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 27TH day of JANUARY, 1991.

*Quincy Achils*

*oll*



STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

CAL E. BOWE,  
a/k/a CALLEN E. BOWE,  
a/k/a GOOD SENSE REALTY,

LS9010221REB

Respondent

PROPOSED DECISION

The parties to this proceeding for the purposes of Wis. Stats. sec. 227.53 are:

Cal E. Bowe  
c/o Waupaca County Jail  
1402 Royalton Street  
Waupaca, WI 54981

State of Wisconsin Real Estate Board  
1400 East Washington Avenue, Room 281  
P.O. Box 8935  
Madison, WI 53708

Department of Regulation & Licensing  
Division of Enforcement  
1400 East Washington Avenue, Room 183  
P.O. Box 8935  
Madison, WI 53708

A hearing was conducted in the above-captioned matter on November 26, 1990, commencing at 9:30 a.m., at 1400 East Washington Avenue, Madison, Wisconsin. Complainant appeared by Attorney Henry E. Sanders. Mr. Bowe did not appear nor did anyone appear purporting to represent him. At hearing, complainant's attorney moved for a default ruling based on respondent's failure to file an Answer to the Complaint and his failure to appear at the time set for hearing. The motion was granted conditioned upon presentation by the complainant of prima facie evidence of the allegations of the Complaint. Complainant's attorney thereafter presented documentary and testimonial evidence supporting the Complaint allegations.

Based upon the entire record in this matter, the hearing examiner recommends that the Real Estate Board adopt as its final decision in this matter the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Callen E. Bowe (respondent), 707 Roylton Street, Waupaca, WI 54981, is licensed as a real estate broker in Wisconsin by license #5886, issued on September 14, 1988. Respondent was at the time of the hearing in this matter incarcerated in the Waupaca County Jail awaiting trial on two criminal actions. One action charges respondent with two counts of issuing a worthless check, contrary to Wis. Stats. sec. 943.24. The second action charges respondent with 14 counts of issuing a worthless check, one of the counts being a Class E felony. At the time of the hearing herein, respondent's trial was scheduled to be conducted on January 4, 1991.

2. Respondent's September 8, 1988, application for a broker's license, bearing his notarized signature and filed with the board on September 9, 1988, asks the following question on page two at paragraph 9.a.:

- a. Have you ever been convicted of a felony or misdemeanor (excluding speeding tickets)? If Yes, attach copy of criminal complaint & judgment of conviction. If applicable, list name, address and telephone number of probation officer below.

Respondent answered "No" to the foregoing question.

3. Between June 6, 1978 and September 25, 1987, respondent was convicted of the following offenses:

June 6, 1978: Operating a vehicle while intoxicated and hit & run; Milwaukee, Wisconsin

March 23, 1981: Driving under the influence; Milwaukee, Wisconsin

June 22, 1984: Issuing a worthless check; Pensacola, Florida

November 12, 1985: Seventeen counts of issuing a worthless check; Pensacola, Florida

June 5, 1987: Ten counts of issuing a worthless check; Pensacola, Florida.

July 2, 1987: Aggravated assault, carrying a concealed weapon, and driving while license suspended; Pensacola, Florida

September 25, 1987: Twelve counts of issuing a worthless check; Pensacola, Florida.

4. Conviction of the crime of issuing a worthless check constitutes a conviction the circumstances of which substantially relate to the circumstances of the practice of real estate.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction in this matter pursuant to Wis. Stats. sec. 452.14.

2. In having answered "No" on his application for licensure to the question whether he had ever been convicted of a felony or misdemeanor (excluding speeding tickets), respondent has made a material misstatement in the application for a license or registration, or in any information furnished to the board or department, in violation of Wis. Stats. sec. 452.14(3)(a).

3. In having been convicted in the State of Florida of the crime of issuing a worthless check, respondent has been convicted of a crime the circumstances of which substantially relate to practice of real estate, in violation of Wis. Adm. Code sec. RL 24.17(2) and, pursuant to Wis. Adm. Code sec. RL 24.01(3), respondent has thereby demonstrated incompetency to act as a broker in such manner as to safeguard the interests of the public, within the meaning and in violation of Wis. Stats. sec. 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Callen E. Bowe to practice as a real estate broker in the State of Wisconsin be, and hereby is, revoked, and any license certificates issued to Callen E. Bowe shall be returned to the office of the Real Estate Board.

IT IS FURTHER ORDERED that pursuant to Wis. Stats. sec. 440.20, the costs of this proceeding shall be assessed against the respondent.

OPINION

This is a disciplinary proceeding in which the "opinion" section of the Proposed Decision required by the Wisconsin Administrative Procedure Act is almost superfluous. Respondent has been convicted a number of times in Florida for issuing

worthless checks, and he was at the time of hearing incarcerated in the Waupaca County jail charged with the same offense. As to this latest incarceration, it is alleged that as of August 27, 1990, respondent had written at least 19 worthless checks totaling over \$5000 in Waupaca, Waushara and Winnebago Counties, and that many of them were written on respondent's real estate trust account. A real estate broker is required to handle client funds entrusted to the broker with scrupulous care and honesty, and respondent's conviction history evinces conduct which is diametrically contrary to that requirement. The circumstances of respondent's convictions are therefore clearly and substantially related to the circumstances of the practice of real estate, and respondent must be found to have violated Wis. Adm. Code sec. RL 24.17(3) and Wis. Stats. sec. 452.14(3)(i).

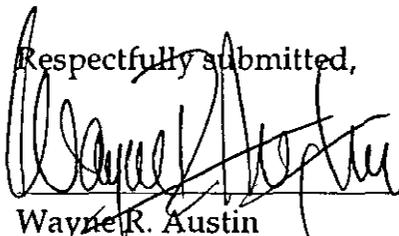
The violation of Wis. Stats. sec. 452.14(3)(a) is equally clear. Respondent neither answered nor appeared at the hearing in this matter, and therefore neither denied nor attempted an explanation of the material misstatement on his application. Assuming, as we may, that respondent didn't simply forget about his previous convictions, the sole remaining inference is that he intended to defraud the board. Unfortunately, he succeeded.

What is finally also clear is that no discipline other than revocation of respondent's license is appropriate in this case. Anything less -- a suspension for example -- would result in automatic relicensure at some future time of an individual who gives every indication that he cannot be rehabilitated. Similarly, such lesser discipline would not serve to deter other licensees from engaging in similar unscrupulous conduct, and would therefore fail to protect the public health, safety and welfare. Accordingly, full revocation is necessary to subserve the disciplinary objectives of rehabilitation, deterrence and public protection announced by the Wisconsin Supreme Court in *State v. Aldrich*, 71 Wis. 2d 206 (1976).

Should respondent at some future time feel that he can demonstrate his rehabilitation, he may petition the board for reinstatement of the license. It is assumed, however, that by that time, the mandatory minimum period of nonlicensure imposed by Wis. Stats. sec. 452.15 will have long passed.

Dated at Madison, Wisconsin this 9th day of January, 1991.

Respectfully submitted,



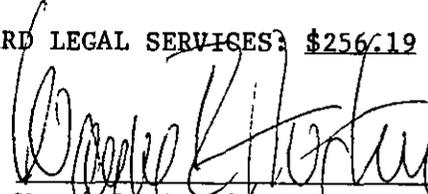
Wayne R. Austin

Administrative Law Judge



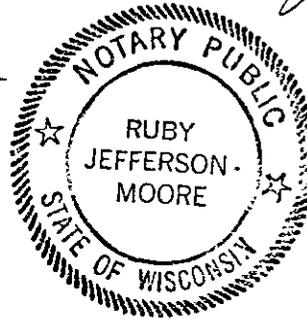
Total administrative law judge expense for Wayne R. Austin:  
8 hours, 10 minutes @ \$31.37, salary and benefits:.....\$256.19

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: \$256.19

  
\_\_\_\_\_  
Wayne R. Austin  
Administrative Law Judge

Sworn to and subscribed before me this 9<sup>th</sup> day of January, 1991.

  
\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission is permanent



WRA:BDLS:1058

## NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,  
the times allowed for each and the identification  
of the party to be named as respondent)

The following notice is served on you as part of the final decision:

### 1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with the State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

### 2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon the State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is January 28, 1991.

WLD:dms  
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (c). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly as may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally

disposing of the application for rehearing, as within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	AFFIDAVIT OF COSTS
PROCEEDINGS AGAINST	:	(WIS. STATS. 440.22)
	:	90 REB 134, 90 REB 170
CAL E BOWE,	:	90 REB 171, 90 REB 187
RESPONDENT.	:	

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STATE OF WISCONSIN)  
                                  )  
COUNTY OF DANE      )

Henry E. Sanders, being first duly sworn on oath, deposes and states as follows:

1. Your affiant is an attorney licensed to practice law in the State of Wisconsin, and is employed by the State of Wisconsin, Department of Regulation and Licensing, Division of Enforcement (Division).
2. In the course of his employment, your affiant was assigned to prosecute the above-captioned matter(s) and in that regard did render the services described below.
3. Anne Vandervort, an employee of the division, was assigned as investigator in the captioned matters and performed the work described below.
4. The costs set forth below are the reasonable costs of these proceedings.

Prosecuting Attorney Costs  
Henry E. Sanders  
Case #90 REB 134

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME SPENT</u>
05/09/90	Screened informal complaint	10 min
08/28/90	"Primary investigation completed" (PIC) Review	1 hr
09/17/90	Files review	1 hr
10/02/90	Drafted notice of Hearing & Complaint(s)	5 hrs
10/05/90	Proofed/Revised Notice & Complaint(s)	30 min
10/08/90	Proofed Final Notice and Complaint copies	2 hrs
	Readied for mailing	
10/09/90	Readied for mailing	
11/25/90	Files review; organized files; hearing preparation	3 hrs
11/26/90	Hearing(s) appearance	20 min
1/30-31/90	"Costs" Affidavit research/preparation	<u>4 hrs</u>
	TOTAL	17 hrs.

Case #90 REB 170

05/31/90	Screened informal complaint	10 min
06/21/90	Reviewed case/instructions to investigator	50 min
08/28/90	PIC review	60 min
09/17/90	PIC review	60 min
09/18/90	Telephone conversation with probation officer/Berg	10 min
10/02/90	Status update telecon with agent Berg and Respondent's address location	10 min
10/24/90	Telephone call from agent Berg RE: pending criminal charges	5 min
10/26/90	Telephone call to Waupaca Sheriff's Department RE service of Notice/Complaint, and Respondent's appearance at scheduled hearing	<u>5 min</u>
	TOTAL	3 hr 30 min

Case #90 REB 171

05/31/90	Screened Informal Complaint	10 min
08/28/90	PIC review	<u>30 min</u>
	TOTAL	40 min

Case #90 REB 187

06/15/90	Screened Informal Complaint	5 min
08/28/90	PIC review	<u>30 min</u>
	TOTAL	35 min

Prosecuting Attorney Costs For Henry E. Sanders  
based upon current salary and benefits at 17 hrs @ \$30.17 = TOTAL \$512.89

Investigative Costs for Anne Vandervort

Case #90 REB 134

05/11/90	Reviewed & prioritized file	10 min
06/20/90	Reviewed file	<u>15 min</u>
	TOTAL	25 min

Case #90 REB 170

06/12/90	Reviewed & prioritized file	10 min
06/20/90	Retrieved licensure related documents	15 min
06/26/90	Telecon with probation agent/Berg; memo	40 min
07/05/90	Consultation with real estate auditor/Schmitt	<u>20 min</u>
	TOTAL	1 hr 25 min

Case #90 REB 171

06/12/90	Reviewed & prioritized file	10 min
07/26/90	Telecon with probation agent/Berg; memo	

07/10/90	Telecon with Waupaca, memo; telecon with probation agent/Berg, memo	40 min
07/15/90	Consultation with real estate auditor/Schmitt	20 min
07/17/90	Telecon with Ferd Wheddie/seller of subject property; memo	20 min
07/31/90	Call to Waupaca's DA/Lennon; memo	20 min
07/31/90	Call to Waupaca's courthouse RE status; memo	20 min
08/07/90	Reviewed files; called probation agent and courthouse; memo	45 min
08/08/90	Called Florida for certified copies of documents	20 min
08/08/90	Called Florida for certified copies of documents	15 min
08/13/90	Called Waupaca's DA office; memo	5 min
08/22/90	Reviewed DA's documentation; called Board Advisor; memo	30 min
08/22/90	Prepared case summaries	90 min
		TOTAL 5 hr 35 min

Case #90 REB 187

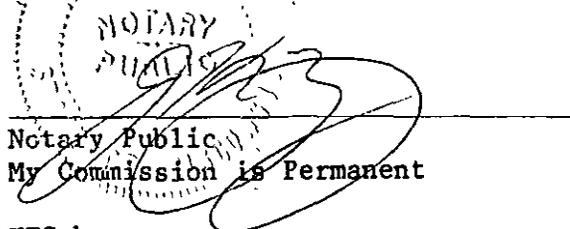
06/29/90	Reviewed & prioritized file	10 min
07/10/90	Call to Michael Halpin, Central Wisconsin Title of Rhinelander, Inc., for transaction documents; memo	5 min
07/13/90	Call to Michael Halpin RE requested documents; memo	20 min
		TOTAL 35 min

TOTAL HOURS 8 hr

Total investigator's costs at \$17.53 per hour based upon current salary and benefits. . . . .	TOTAL	\$140.24
Total assessable cost . . . . .	TOTAL	\$653.13

  
 Henry E. Sanders  
 Attorney  
 Division of Enforcement  
 (608) 266-8956

Subscribed and sworn to before me this 4th day of February, 1991.

NOTARY PUBLIC  
  
 Notary Public  
 My Commission is Permanent

HES:bmj  
 ATY-1384