WISCONSIN DEPARTMENT OF REGULATION & LICENSING

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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
CRAIG R. KOSZAREK, RESPONDENT.	:	(Case No. LS 9509142 REB)

The parties to this matter for the purposes of sec. 227.53, Stats., are:

Craig R. Koszarek
136 West Uncas Avenue
Milwaukee, WI 53207

State of Wisconsin
Department of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Real Estate Board
P.O. Box 8935
Madison, WI 53708

A Class 2 hearing was conducted in the above-captioned matter on October 9 and 22, 1996. Attorney Charles J. Howden appeared for the Department of Regulation & Licensing, Division of Enforcement. Mr. Koszarek appeared in person and by Attorney Alan H. Deutch. The transcript of the proceedings was received on December 3, 1996.

The administrative law judge filed his *Proposed Decision* on February 10, 1997. Complaint filed *Complainant's Objections to Proposed Decision*, dated February 20, 1997. Respondent filed *Respondent's Objections to Proposed Decision and Respondent's Objection to Complainant's Objections*, dated February 28, 1997. Complainant filed *Complainant's Response to Respondent's Objections*, dated March 6, 1997. Additional correspondence was received from respondent's attorney and complainant's attorney, dated March 17, 1997 and March 19, 1997, respectively.

Based upon the entire record herein, the Real Estate Board adopts as its final decision the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Craig R. Koszarek (respondent) is licensed as a real estate broker in the State of Wisconsin by license #45035 granted on May 16, 1991. At all times relevant hereto, respondent practiced real estate as owner of a sole proprietorship known as Wisconsin Real Estate Services, at 5810 West Oklahoma Avenue, #207, Milwaukee, WI 53219.

2. Joseph P. Anzivino, 727 Clinton Street, #1, Waukesha, WI 53186, (J. Anzivino) was licensed as a real estate salesperson on July 23, 1992. At all times relevant hereto, J. Anzivino was employed as a salesperson by respondent at Wisconsin Real Estate Services, commencing his employment on or about December 28, 1992.

3. J. Anzivino's salesperson license expired on December 31, 1992, and was not renewed until approximately April 13, 1994. J. Anzivino continued to be employed as a salesperson by Wisconsin Real Estate Services and to be supervised by respondent during that period.

4. On October 14, 1993, respondent prepared a WB-11 Residential Offer to Purchase for the signature of buyer Gene Trimble (Trimble). Pursuant to that offer, Trimble offered to purchase property described on the offer as "Hwy-77 in the City of Spider Lake, County of Sawyer, Wisconsin, more particularly described as: Legal description to follow on title." That description is factually incorrect in that there is no City of Spider Lake. The property in question is recreational property then owned by Ralph C. Anzivino and Mary Jo Anzivino, and its correct legal description is "That part of Government Lot 5, Section 12, Township 42 North, Range 5 West, described as Lot 2, recorded in Vol. 8 of certified survey maps for Sawyer County, State of Wisconsin, at pages 101-102, survey no. 1627."

5. The Residential Listing Contract for the Clam Lake property was prepared by Ralph Anzivino and was signed by him on or about October 10, 1993. The listing contract fails to include a legal description of the property, does not indicate the name of the brokerage firm, was not executed by anyone from Wisconsin Real Estate Services, and was not executed by Mary Jo Anzivino, the wife of the seller.

6. Trimble executed the Offer to Purchase on October 14, 1993, and delivered to respondent earnest money in the amount of $5000.00 toward the total purchase price of $25,000. On either October 15 or October 16, 1993, respondent orally notified Trimble that the seller had accepted the offer.

7. Ralph C. Anzivino is the father of Joseph Anzivino, and is an attorney who was previously licensed as a real estate broker by license #18478, granted on May 23, 1977. That license expired on December 31, 1992.

8. Lines 64 through 67 of the Trimble Offer to Purchase state as follows:

> This offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. Mail or a commercial delivery system, addressed to buyer at 5810 West Oklahoma Avenue, #207, or by personal delivery of the accepted offer to buyer on or before 10/16/93. Otherwise, the offer is void and all earnest money shall be promptly returned to Buyer.

9. The Trimble Offer to Purchase was signed by Ralph Anzivino on October 18, 1993, and, despite Trimble's repeated requests that he be provided a copy of the accepted offer, it was not delivered to Trimble at any time prior to the closing of the transaction on November 24, 1993. Respondent did not draft, nor did the parties execute, any amendment to the Offer to Purchase amending or waiving the deadline for acceptance of the offer, or amending or waiving the place or manner of acceptance of the offer.

10. Subsequent to October 17, 1993, Trimble indicated to respondent that he did not wish to proceed with the transaction, and he formally demanded return of the earnest money by letters dated November 3, November 9, and November 11, 1993. The basis for the demand was that Trimble had never received an accepted offer. Trimble also made reference in these letters to the fact that the property was being offered by a Hayward, Wisconsin real estate company for $22,500, that the cabin's water was not working, that the toilet was inoperative and that the heating system was inadequate.

11. Despite the fact that respondent had failed to provide Trimble with an accepted offer, and despite the facts that the Offer to Purchase had expired on October 16, 1993, and was not executed by Ralph Anzivino until October 18, 1993, respondent failed to return the earnest money to Trimble. Instead, sometime prior to the actual closing, respondent notified Trimble that the offer had been timely accepted by the seller and that if the transaction did not close, the $5000.00 earnest money would be forfeited and turned over to the sellers. This oral notice was confirmed by written notice to Trimble on the letterhead of Wisconsin Real Estate Services dated November 12, 1993. The written notice followed a letter dated November 8, 1993, from Ralph Anzivino and addressed to Trimble and to respondent stating in part as follows:

> Pursuant to the [real estate contract between Gene Trimble and Ralph C. Anzivino], please understand this notice as the seller's election to treat the $5000 earnest money as liquidated damages for Mr. Trimble's failure to close.

12. In the written notice of intent to disburse the earnest money to the seller, it is claimed that respondent was advised to provide such notice by the Department of Regulation & Licensing, by the Wisconsin Realtors Association Legal Hotline, and by "an unbiased real estate attorney." The Department of Regulation & Licensing did not provide any such advice, and respondent's question to the Realtors Association Legal Hotline and to the "unbiased real estate attorney" misrepresented the situation by failing to notify the Hotline and the attorney of the fact that the acceptance was dated two days after the acceptance deadline.

13. The Trimble Offer to Purchase established a closing date of October 29, 1993. Trimble did not appear on that date. Trimble appeared at the subsequently established closing date of November 3, 1993, but refused to close at that time. Based on the November 12, 1993, notice of intent to disburse the earnest money to the seller, and confronted with the possibility that he would lose all or a portion of his earnest money, Trimble thereafter agreed by letter dated November 18, 1993, to close the transaction, and the closing went forward on November 24, 1993.

14. In anticipation of the closing, respondent prepared a Closing Statement on the letterhead of Wisconsin Real Estate Services, reflecting a closing date of November 3, 1993. Respondent failed to redraft the closing statement to reflect the actual closing date of November 24, 1993, and failed to amend the tax proration to reflect the actual closing date.

15. At the closing of the transaction on November 24, 1993, Trimble was presented with an "Amendment to Contract of Sale" for Trimble's signature changing the acceptance date of the offer from October 16, 1993, to October 18, 1993; and changing the closing date from October 29, 1993, to November 3, 1993. Trimble refused to execute the amendment.

CONCLUSIONS OF LAW

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

2. By continuing to employ and to supervise Anzivino during the period from January 1, 1993, until April 13, 1994, while Anzivino was not licensed, respondent has failed to determine at the beginning of each biennial licensing period that each licensee employed by him is properly licensed, in violation of sec. RL 17.07, Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. In accepting and utilizing a listing contract prepared by Ralph Anzivino which failed to include a legal description of the property, did not indicate the name of the brokerage firm, was not executed by anyone from Wisconsin Real Estate Services, and was not executed by Mary Jo Anzivino, the wife of the seller; and in drafting an offer to purchase which incorrectly describes the property in question; respondent has failed in his responsibility for the preparation and correctness of all entries on these real estate forms, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

4. In representing to Trimble that his offer to purchase the Anzivino property had been accepted on a timely basis, and in failing to notify Trimble that the offer had not been executed by Ralph Anzivino until two days after the deadline established by the offer, respondent has failed to promptly inform the seller whether the buyer has accepted, rejected or countered the written offer to purchase, and to immediately provide a written statement concerning the date and time when an offer has expired without acceptance when such a statement is requested by the

time when an offer has expired without acceptance when such a statement is requested by the prospective buyer, in violation of sec. RL 24.13(4), Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

5. In having failed to provide the buyer with a copy of the Offer to Purchase executed by Ralph Anzivino until the time of closing, respondent has failed to promptly distribute to the buyer an exact and complete copy of that document, in violation of secs. RL 15.02(1) and RL 15.02(2)(b), Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

6. In failing to redraft the closing statement in the transaction to reflect the actual date of closing, and in failing to prorate the taxes on the property as of the day of closing, respondent has failed in his responsibility for the preparation and correctness of all entries on the closing statement, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Craig R. Koszarek to practice as a real estate broker in Wisconsin be, and hereby is, suspended for a period of not less than six (6) months, commencing 30 days from the date of the Real Estate Board's order adopting the terms of this Proposed Decision.

FURTHERMORE, IT IS ORDERED that following the completion of the six (6) month suspension period, the license of Craig R. Koszarek to practice as a real estate broker in Wisconsin may be reinstated only after submitting proof to the board of having successfully completed the educational requirements for applicants for an original real estate salesperson's license and original real estate broker's license, as set forth in Ch. RL 25, Wis. Adm. Code.

FURTHERMORE, IT IS ORDERED that upon successfully completing the requirements above, Craig R. Koszarek shall be issued a real estate broker's license, subject to the following limitations:

1. For a period of a period of one (1) year, Craig R. Koszarek may perform real estate services only while in the employment and under the supervision of a licensed real estate broker.

2. Upon obtaining employment with a licensed real estate broker, Craig R. Koszarek shall provide the board with the broker-employer's name, address and telephone number.

3. Commencing the first day of the third month following the issuance of a limited real estate license to Craig R. Koszarek, and on the first day of every three months thereafter, respondent shall cause his broker-employer to submit a written statement to the board assessing: 1) the performance and dealings with the public by respondent as a real estate licensee, and 2) whether or not respondent has followed the guidelines and requirements established by the broker-employer.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., the costs of this proceeding are assessed against Craig R. Koszarek.

EXPLANATION OF VARIANCE

The Real Estate Board has accepted the Findings of Facts and Conclusions of Law recommended by the ALJ in his Proposed Decision. However, the board has not accepted the recommendation that respondent's license be suspended for 60 days. Rather, it is the opinion of the board that respondent's license should be suspended for 6 months, that he should be required to complete the real estate salesperson's and broker's educational programs, and that upon reinstatement of his license he should practice in the employment, and under the supervision of a real estate broker for a period of one year.

In establishing the appropriate discipline in this proceeding, it is recognized that the interrelated purposes for applying disciplinary measures are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) deter other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206, 209 (1976). Punishment of the licensee is not an appropriate consideration. *State v. MacIntyre*, 41 Wis. 2d 481, 485 (1969).

Respondent's conduct involves both incompetency and a willingness to employ substantial misrepresentations in order to complete a real estate sale. The conclusions of law set forth three violations which establish general incompetent real estate practice. These are:

- His employment for over a year of an individual not possessing a current real estate license. Respondent obviously did not fulfill his obligation under sec. RL 17.07, to determine biennially that each of his real estate staff possessed a current license.

- His acceptance and utilization of a listing contract which did not include a legal description of the property, the name of the brokerage firm, the signature of any person on behalf of the brokerage firm or the wife of the seller, as well as his drafting of an offer to purchase with an incorrect property description.

- His failure to redraft the closing statement to accurately reflect the closing date and to prorate the taxes to the date of closing.

The remaining violations found in this proceeding are not only reflective of incompetent practice, but strongly suggest that respondent is not worthy of the trust which the public places in, and has a right to expect from a real estate broker. These are:

- His representing to the buyer that the offer had been timely accepted when, in fact, he knew it had not been executed by the seller until two days after the buyer's deadline.

- His failing to provide the buyer with a copy of the offer until the time of closing.

This conduct by respondent evolved from an offer which was drafted by him, and pursuant to which the buyer provided respondent $5,000 earnest money. Subsequently, the buyer came to believe that the property had been misrepresented to him, and he requested his earnest money be returned. At this point, respondent misrepresented to the buyer that the offer had been properly accepted and that the buyer would lose his $5,000 if he attempted to rescind the contract. This representation was false, known to be false by respondent and made for the purpose of improperly coercing the buyer to proceed to closing. The buyer's inability to discover the misrepresentations made by the respondent was magnified by not having a copy of the offer provided to him until the date of closing. This was an omission attributable to respondent and inferentially committed for the purpose of hiding his misrepresentations from the buyer until it was too late for the buyer to discover and take appropriate action upon them.

There are additional aggravating factors inherent in respondent's conduct, from which the public must be protected, other licensees deterred from engaging in, and respondent rehabilitated from contemplating committing in the future. Respondent's conduct is made even more egregious, and deserving of harsher disciplinary sanction, when it is noted the lengths to which respondent was willing to go to deceive the buyer. When the buyer balked at proceeding to close on the property, the buyer was sent a written notice of intent to disburse the $5,000 to the seller. In that notice, it was claimed that respondent was advised to submit the notice by the Department of Regulation and Licensing, the Wisconsin Realtors Association and an "unbiased real estate attorney. In fact, the department provided no such advice, and the respondent failed to inform the Wisconsin Realtors Association and the "unbiased real estate attorney" that the seller's acceptance had occurred two days after the deadline in the offer. (See, Findings of Fact #12 and Exhibit #13).

This conduct shows a willingness on respondent's part to strengthen and "legitimize" his misrepresentation to the buyer through claiming that the state agency which licenses and assists in the regulation of real estate professionals, the professional association, itself, and an "unbiased" attorney, all agreed that the buyer had to close the transaction or lose his $5,000 earnest money. In fact, respondent not only misrepresented the true state of the facts to the buyer, but also intentionally deceived the Wisconsin Realtors Association and an individual attorney in his quest to gain their unknowing "assistance" in deceiving the buyer.

Additional concerns are raised by virtue of the fact that the seller's son was employed by and performed real estate services in this transaction for respondent. The seller's son owed

respondent money, which was paid to respondent from the son's share of the commission at closing. It was the seller's son who respondent additionally failed to observe had been providing real estate services for the firm for over a year without a current real estate license.

As suggested by the ALJ, the board believes there is little by way of mitigating circumstances for respondent's actions in this case. For example, although it appears that the buyer eventually sold the property two years later for $3,000 more than his purchase price, his holding costs and expenditures on improvements to the property appear to make this a "paper profit", at best.

Additionally, it is noted that the seller is an attorney, was formerly licensed as a real estate broker, and a professor and expert in contract law. It may be that such circumstances were perceived by respondent as placing additional -- perhaps self-induced -- pressure upon him to deceive the buyer. Nevertheless, an abdication of professional responsibilities is not an acceptable response to such situations by a real estate licensee. It clearly does not justify conduct intended to force a buyer to close a real estate transaction by misrepresentation.

In reviewing all of the circumstances presented in the record of this case, it is the board's opinion that the purposes of discipline may only be served by imposing a lengthy suspension, to be lifted upon completion of respondent's re-education in the principles and practice of real estate, and subsequent provision of real estate services under the supervision of another real estate broker for one year.

The sanctions imposed are all geared toward protecting the public from future misconduct by this respondent, whether that conduct is a result of a lack of knowledge or of an intentional vein. The lengthy suspension also is intended to serve notice upon other licensees that actions similar in nature to those engaged in here will be dealt with severely.

The educational and supervision requirements are intended primarily to assist in the rehabilitation of respondent. It is noted that at the time of respondent's misconduct, he had only been licensed for a period of a little over two years. Although, this may be viewed by some as a mitigating factor, it also suggests that respondent was not in a position, either personally or professionally, to appropriately handle all of the aspects surrounding the circumstances of this transaction. Completing both the salesperson's and broker's pre-licensure educational programs, in combination with his experience here, should serve to impress upon him the need to become both knowledgeable regarding -- and give him the ability to apply -- the fundamental principles of real estate practice which are required of licensees in fulfilling their obligations to the public.

Additionally, serving in the employ of another broker for a year following respondent's reinstatement to practice is intended to assure that he both experiences and learns the manner in which a real estate broker's firm must be ethically and legally operated and conducted. To the extent that respondent's conduct was a result of inexperience in real estate practice, his working under the supervision of another real estate licensee should provide him with the guidance and tools leading to his practicing independently in the future in a manner consistent with the public welfare.

Dated this 26 day of June, 1997.

STATE OF WISCONSIN
REAL ESTATE BOARD

James R. Imhoff, Jr.
Chairman

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of the Disciplinary Proceedings Against

Craig R. Koszarek,

Respondent.

AFFIDAVIT OF MAILING

STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On June 27, 1997, I served the Final Decision and Order dated June 26, 1997, (and Guidelines for Brokers whose Licenses have been Suspended or Revoked to Koszarek), LS9509142REB, upon the Respondent Craig R. Koszarek and his attorney by enclosing a true and accurate copy of the above-described document in an envelope properly stamped and addressed to the above-named Respondent and his attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the Respondent's envelope is P 221 157 303 and the certified mail receipt number on his attorney's envelope is P 221 157 304.

3. The address used for mailing the Decision is the address that appears in the records of the Department as the Respondent's last-known address:

Craig R. Koszarek
136 W. Uncas Avenue
Milwaukee WI 53207

Alan H. Deutch, Attorney
330 E. Kilbourn Avenue, Suite 925
Milwaukee WI 53202

Kate Rotenberg
Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

NOTARY PUBLIC
RUBY JEFFERSON-MOORE
STATE OF WISCONSIN

Subscribed and sworn to before me
this 27th day of June, 1997.

Ruby Jefferson-Moore
Notary Public, State of Wisconsin
My commission is permanent.

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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708.

The Date of Mailing this Decision is:

June 27, 1997

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	NOTICE OF FILING PROPOSED DECISION LS9509142REB
CRAIG R. KOSZAREK, RESPONDENT.	:	

TO: Alan H. Deutch, Attorney
Deutch & Greenberg
330 East Kilbourn Avenue #925
Milwaukee, WI 53202
Certified # P 213 340 405

Charles J. Howden, Attorney
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708

PLEASE TAKE NOTICE that a Proposed Decision in the above-captioned matter has been filed with the Real Estate Board by the Administrative Law Judge, Wayne R. Austin. A copy of the Proposed Decision is attached hereto.

If you have objections to the Proposed Decision, you may file your objections in writing, briefly stating the reasons, authorities, and supporting arguments for each objection. If your objections or argument relate to evidence in the record, please cite the specific exhibit and page number in the record. Your objections and argument must be received at the office of the Real Estate Board, Room 281, 1400 East Washington Avenue, P.O. Box 8935, Madison, Wisconsin 53708, on or before February 24, 1997. You must also provide a copy of your objections and argument to all other parties by the same date.

You may also file a written response to any objections to the Proposed Decision. Your response must be received at the office of the Real Estate Board, no later than seven (7) days after receipt of the objections. You must also provide a copy of your response to all other parties by the same date.

The attached Proposed Decision is the Administrative Law Judge's recommendation in this case and the Order included in the Proposed Decision is not binding upon you. After reviewing the Proposed Decision, the Real Estate Board will issue a binding Final Decision and Order.

Dated at Madison, Wisconsin this 10th day of February, 1997.

Wayne R. Austin
Administrative Law Judge

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

CRAIG R. KOSZAREK LS9509142REB

Respondent

PROPOSED DECISION

The parties to this matter for the purposes of sec. 227.53, Stats., are:

Craig R. Koszarek
136 West Uncas Avenue
Milwaukee, WI 53207

State of Wisconsin
Department of Regulation & Licensing
P.O. Box 8935
Madison, WI 53708

State of Wisconsin
Real Estate Board
P.O. Box 8935
Madison, WI 53708

A Class 2 hearing was conducted in the above-captioned matter on October 9 and 22, 1996. Attorney Charles J. Howden appeared for the Department of Regulation & Licensing, Division of Enforcement. Mr. Koszarek appeared in person and by Attorney Alan H. Deutch. The transcript of the proceedings was received on December 3, 1996.

Based upon the entire record herein, the administrative law judge recommends that the Real Estate Board adopt as its final decision the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Craig R. Koszarek (respondent) is licensed as a real estate broker in the State of Wisconsin by license #45035 granted on May 16, 1991. At all times relevant hereto, respondent

practiced real estate as owner of a sole proprietorship known as Wisconsin Real Estate Services, at 5810 West Oklahoma Avenue, #207, Milwaukee, WI 53219.

2. Joseph P. Anzivino, 727 Clinton Street, #1, Waukesha, WI 53186, (J. Anzivino) was licensed as a real estate salesperson on July 23, 1992. At all times relevant hereto, J. Anzivino was employed as a salesperson by respondent at Wisconsin Real Estate Services, commencing his employment on or about December 28, 1992.

3. J. Anzivino's salesperson license expired on December 31, 1992, and was not renewed until approximately April 13, 1994. J. Anzivino continued to be employed as a salesperson by Wisconsin Real Estate Services and to be supervised by respondent during that period.

4. On October 14, 1993, respondent prepared a WB-11 Residential Offer to Purchase for the signature of buyer Gene Trimble (Trimble). Pursuant to that offer, Trimble offered to purchase property described on the offer as "Hwy-77 in the City of Spider Lake, County of Sawyer, Wisconsin, more particularly described as: Legal description to follow on title." That description is factually incorrect in that there is no City of Spider Lake. The property in question is recreational property then owned by Ralph C. Anzivino and Mary Jo Anzivino, and its correct legal description is "That part of Government Lot 5, Section 12, Township 42 North, Range 5 West, described as Lot 2, recorded in Vol. 8 of certified survey maps for Sawyer County, State of Wisconsin, at pages 101-102, survey no. 1627."

5. The Residential Listing Contract for the Clam Lake property was prepared by Ralph Anzivino and was signed by him on or about October 10, 1993. The listing contract fails to include a legal description of the property, does not indicate the name of the brokerage firm, was not executed by anyone from Wisconsin Real Estate Services, and was not executed by Mary Jo Anzivino, the wife of the seller.

6. Trimble executed the Offer to Purchase on October 14, 1993, and delivered to respondent earnest money in the amount of $5000.00 toward the total purchase price of $25,000. On either October 15 or October 16, 1993, respondent orally notified Trimble that the seller had accepted the offer.

7. Ralph C. Anzivino is the father of Joseph Anzivino, and is an attorney who was previously licensed as a real estate broker by license #18478, granted on May 23, 1977. That license expired on December 31, 1992.

8. Lines 64 through 67 of the Trimble Offer to Purchase state as follows:

> This offer is binding upon both parties only if a copy of the accepted offer is deposited, postage or fees prepaid, in the U.S. Mail or a commercial delivery system, addressed to buyer at 5810 West Oklahoma Avenue, #207, or by personal delivery of the accepted offer to buyer on or before 10/16/93. Otherwise, the offer is void and all earnest money shall be promptly returned to Buyer.

9. The Trimble Offer to Purchase was signed by Ralph Anzivino on October 18, 1993, and, despite Trimble's repeated requests that he be provided a copy of the accepted offer, it was not delivered to Trimble at any time prior to the closing of the transaction on November 24, 1993. Respondent did not draft, nor did the parties execute, any amendment to the Offer to Purchase amending or waiving the deadline for acceptance of the offer, or amending or waiving the place or manner of acceptance of the offer.

10. Subsequent to October 17, 1993, Trimble indicated to respondent that he did not wish to proceed with the transaction, and he formally demanded return of the earnest money by letters dated November 3, November 9, and November 11, 1993. The basis for the demand was that Trimble had never received an accepted offer. Trimble also made reference in these letters to the fact that the property was being offered by a Hayward, Wisconsin real estate company for $22,500, that the cabin's water was not working, that the toilet was inoperative and that the heating system was inadequate.

11. Despite the fact that respondent had failed to provide Trimble with an accepted offer, and despite the facts that the Offer to Purchase had expired on October 16, 1993, and was not executed by Ralph Anzivino until October 18, 1993, respondent failed to return the earnest money to Trimble. Instead, sometime prior to the actual closing, respondent notified Trimble that the offer had been timely accepted by the seller and that if the transaction did not close, the $5000.00 earnest money would be forfeited and turned over to the sellers. This oral notice was confirmed by written notice to Trimble on the letterhead of Wisconsin Real Estate Services dated November 12, 1993. The written notice followed a letter dated November 8, 1993, from Ralph Anzivino and addressed to Trimble and to respondent stating in part as follows:

> Pursuant to the [real estate contract between Gene Trimble and Ralph C. Anzivino], please understand this notice as the seller's election to treat the $5000 earnest money as liquidated damages for Mr. Trimble's failure to close.

12. In the written notice of intent to disburse the earnest money to the seller, it is claimed that respondent was advised to provide such notice by the Department of Regulation & Licensing, by the Wisconsin Realtors Association Legal Hotline, and by "an unbiased real estate attorney." The Department of Regulation & Licensing did not provide any such advice, and respondent's question to the Realtors Association Legal Hotline and to the "unbiased real estate attorney" misrepresented the situation by failing to notify the Hotline and the attorney of the fact that the acceptance was dated two days after the acceptance deadline.

13. The Trimble Offer to Purchase established a closing date of October 29, 1993. Trimble did not appear on that date. Trimble appeared at the subsequently established closing date of November 3, 1993, but refused to close at that time. Based on the November 12, 1993, notice of intent to disburse the earnest money to the seller, and confronted with the possibility that he would lose all or a portion of his earnest money, Trimble thereafter agreed by letter dated November 18, 1993, to close the transaction, and the closing went forward on November 24, 1993.

14. In anticipation of the closing, respondent prepared a Closing Statement on the letterhead of Wisconsin Real Estate Services, reflecting a closing date of November 3, 1993. Respondent failed to redraft the closing statement to reflect the actual closing date of November 24, 1993, and failed to amend the tax proration to reflect the actual closing date.

15. At the closing of the transaction on November 24, 1993, Trimble was presented with an "Amendment to Contract of Sale" for Trimble's signature changing the acceptance date of the offer from October 16, 1993, to October 18, 1993; and changing the closing date from October 29, 1993, to November 3, 1993. Trimble refused to execute the amendment.

CONCLUSIONS OF LAW

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

2. By continuing to employ and to supervise Anzivino during the period from January 1, 1993, until April 13, 1994, while Anzivino was not licensed, respondent has failed to determine at the beginning of each biennial licensing period that each licensee employed by him is properly licensed, in violation of sec. RL 17.07, Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. In accepting and utilizing a listing contract prepared by Ralph Anzivino which failed to include a legal description of the property, did not indicate the name of the brokerage firm, was not executed by anyone from Wisconsin Real Estate Services, and was not executed by Mary Jo Anzivino, the wife of the seller; and in drafting an offer to purchase which incorrectly describes the property in question; respondent has failed in his responsibility for the preparation and correctness of all entries on these real estate forms, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

4. In representing to Trimble that his offer to purchase the Anzivino property had been accepted on a timely basis, and in failing to notify Trimble that the offer had not been executed by Ralph Anzivino until two days after the deadline established by the offer, respondent has failed to promptly inform the seller whether the buyer has accepted, rejected or countered the written offer to purchase, and to immediately provide a written statement concerning the date and time when an offer has expired without acceptance when such a statement is requested by the prospective buyer, in violation of sec. RL 24.13(4), Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

5. In having failed to provide the buyer with a copy of the Offer to Purchase executed by Ralph Anzivino until the time of closing, respondent has failed to promptly distribute to the buyer an exact and complete copy of that document, in violation of secs. RL 15.02(1) and RL 15.02(2)(b), Code, and respondent has thereby demonstrated incompetency

to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

6. In failing to redraft the closing statement in the transaction to reflect the actual date of closing, and in failing to prorate the taxes on the property as of the day of closing, respondent has failed in his responsibility for the preparation and correctness of all entries on the closing statement, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

ORDER

NOW, THEREFORE, IT IS ORDERED that the license of Craig R. Koszarek to practice as a real estate broker in Wisconsin be, and hereby is, suspended for a period of 60 days, commencing 14 days from the date of the Real Estate Board's order adopting the terms of this Proposed Decision.

IT IS FURTHER ORDERED that, pursuant to sec. 440.22, Stats., the costs of this proceeding are assessed against Craig R. Koszarek.

OPINION

By continuing to employ and to supervise Anzivino during the period from January 1, 1993, until April 13, 1994, while Anzivino was not licensed, respondent has failed to determine at the beginning of each biennial licensing period that each licensee employed by him is properly licensed, in violation of sec. RL 17.07, Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

That Joe Anzivino was not licensed during the period in question is not in issue. Nor is there any question but that sec. RL 17.07, Code, requires that a supervising broker, "prior to employing a licensee and at the beginning of each biennial licensure period, determine that each licensee employed by the broker is properly licensed." Mr. Koszarek's defense is that he was justified in his belief that Mr. Anzivino was in fact licensed during that period. He testified that when he employed Anzivino, he knew he was licensed because Anzivino showed him the wall certificate (though not the wallet certificate). His further testimony was that he submitted the Notice of Real Estate Employment at the same time as his, Koszarek's, renewal application, and when he received the acknowledgment of Anzivino's employment, his assumption was that Anzivino was licensed for the new biennium. Whether that is a logical assumption or not may be debatable. What is not debatable is the fact that brokers have an absolute responsibility to determine that employees are currently licensed and that respondent failed to do that. Accordingly, a violation of sec. RL 17.07 has occurred.

In accepting and utilizing a listing contract prepared by Ralph Anzivino which failed to include a legal description of the property, did not indicate the name of the brokerage firm, was not

executed by anyone from Wisconsin Real Estate Services, and was not executed by Mary Jo Anzivino, the wife of the seller; and in drafting an offer to purchase which incorrectly describes the property in question; respondent has failed in his responsibility for the preparation and correctness of all entries on these real estate forms, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

The documents in question, which were admitted as Exhibits 2 and 3, and the authenticity of which is not in dispute, largely speak for themselves. On one minor issue, Ralph Anzivino testified that the property address set forth in the listing contract was accurate and the only mailing address there was for the property (Tr., p. 399). The fact is that that description could describe any number of Clam Lake properties. Scott Minter, University of Wisconsin Program Attorney and a real estate expert, was on the committee that drafted the approved forms utilized in this transaction. Mr. Minter testified at page 364 of the transcript that the description set forth on the listing contract was insufficient to meet the statute of frauds. That makes practical as well as legal sense. As testified by William Bergum, a real estate broker in the Hayward area who had previously listed the Anzivino property: "In that Clam Lake area, oh, when you go about a mile west toward Hayward, it's just literally lined with properties that are on lower Clam Lake, all the way up to Clam Lake itself along Highway 77. [And they all have the -- apparently the street address of Highway 77]. It was also credibly testified by William Bergum that there is no City of Spider Lake and that the closest city in the area is Hayward. (Tr., p. 131) The failure of respondent in his responsibility for the preparation and correctness of all entries on these real estate forms is thus established, and the violation of sec. RL 17.08(2), Code, is therefore clear.

In representing to Trimble that his offer to purchase the Anzivino property had been accepted on a timely basis, and in failing to notify Trimble that the offer had not been executed by Ralph Anzivino until two days after the deadline established by the offer, respondent has failed to promptly inform the buyer whether the seller has accepted, rejected or countered the written offer to purchase, and to immediately provide a written statement concerning the date and time when an offer has expired without acceptance when such a statement is requested by the prospective buyer, in violation of sec. RL 24.13(4), Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

In having failed to provide the buyer with a copy of the Offer to Purchase executed by Ralph Anzivino until the time of closing, respondent has failed to promptly distribute to the buyer an exact and complete copy of that document, in violation of secs. RL 15.02(1) and RL 15.02(2)(b), Code, and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

On adverse examination, respondent testified in part as follows (Tr., p. 59):

Q (by Mr. Howden) Now was a copy of the accepted offer deposited postage or fees prepaid in the U.S. or commercial delivery system addressed to buyer at that address on or before October 16, 1993?

A. When Joe dropped off the paperwork, which I believe was the 16th, we did have it, yes.

Q. And now state this to me again here. You had an offer signed by Mr. Anzivino in your hands as of October 16, 1993?

A. I believe that was the date. It could have been the next day, the 15th, I'm not sure. I know that I had called Mr. Trimble though the very next day and told him we had an accepted offer.

Q. You called Mr. [Trimble] on October what, 16th, 1993?

A. M-hm.

Q. And you called him on that day?

A. No, I believe it was the next day, the 15th.

Joseph Anzivino was originally a party to this matter, but reached a stipulated resolution of the matter as to him (Exhibit #26). After the ALJ ruled that Anzivino was not foreclosed from testifying under oath at variance to the findings in the stipulation, Anzivino testified as follows (Tr., p. 163-164):

Q. (by Mr. Howden) Now Mr. Anzivino, directing your attention to the findings of fact, at what is noted as Page 2 on the bottom, as paragraph 10, it states that the offer was signed and dated at Line Number 149, by Ralph C. Anzivino on October 18, 1993 in the presence of Anzivino. As I understand that to be a statement by yourself that your father signed the offer by Gene Trimble which is at issue in this case in your presence, and that he did so on October 18, 1993. Is that a correct statement?

A. That's what the line states.

Q. And is that line a correct representation of the facts from your point of view?

A. I would truthfully say I don't know. That's been in dispute.

Q. You say you don't know or you say it's been in dispute?

A. I said I don't know. There's other people that are disputing that. I would say --

Q. Well, I'm asking you whether your father signed the Trimble offer and signed the acceptance of it in your presence on October 18, 1993?

A. And I said I don't know.

Ralph Anzivino, the seller in the transaction, also testified as to the date he executed the acceptance of the offer (Tr., p. 400-401):

Q. (by Mr. Deutch) I'm going to show you what's been marked for identification as Exhibit 3. Is that the offer to purchase you received?

A. Yes, it is.

Q. Okay, did you review that document?

A. Yes.

Q. Did you tell your son that you were reviewing the document?

A. Yes.

Q. Did he see you reviewing the document?

A. I reviewed it.

Q. Okay. And what did you do after you reviewed it?

A. I reviewed it and I signed it and dated it.

Q. Okay. Do you recall a date on which you accepted it?

A. Well, it was my belief, and it still is my belief today, that I signed it on the 16th. It was my opinion that I did sign it on the 16th and I misdated it.

The Offer to Purchase at lines 64-67 establishes that the offer was binding upon both parties only if a copy of the accepted offer was deposited, postage or fees prepaid, in the U.S. mail or a commercial delivery system addressed to the buyer at 5810 West Oklahoma Avenue #207 or by personal delivery of the accepted offer to the buyer on or before October 16, 1993. The only evidence in this record that the acceptance was in fact received at respondent's office within that deadline is his self-serving testimony that he "believes" that Joe Anzivino dropped off the accepted offer on October 16, 1993. That is far too little evidence to successfully contravene the clear evidence that the offer to purchase was never delivered to Trimble until the date of closing, and was not even signed by Ralph Anzivino until October 18.

In terms of the date of signing, there is first the document itself, which is in fact dated October 18, 1993. Ralph Anzivino is an attorney, a formerly licensed real estate broker, a professor of law at Marquette University, and an expert on contract law. He testified at length to the fact that he examined the offer to purchase at the time he signed the acceptance. In light of these facts, it is almost impossible to believe that he would not have been cognizant of the terms for acceptance of the Offer to Purchase as requiring acceptance by October 16, and almost unimaginable that in

being aware of that circumstance, he would nonetheless date the acceptance October 18, 1993, if in fact the current date was October 16.

Second, Mr. Anzivino has never made a positive assertion that he in fact signed the acceptance on October 16. When asked by Johnson (Exhibit 38) why he was attempting to enforce an expired offer, he apparently evaded the question by stating that if Mr. Trimble thought he did not have a valid acceptance, he should have retained an attorney. It is true that at hearing, Professor Anzivino testified "Well, it was my belief, and it is still my belief today, that I signed it on the 16th," but that testimony is not credited. If there was even a scintilla of evidence that the executed acceptance had in fact been provided to the buyer within a day or two of the acceptance deadline, then Professor Anzivino's testimony might be given some credence. There is no such evidence, however. Rather, the clear evidence is that not only was the acceptance not provided to Mr. Trimble in a timely manner, but that his repeated requests to receive a copy were ignored. Moreover, when respondent finally provided a copy to Mr. Trimble at the time of closing, he also sought to have Mr. Trimble execute an amendment to the offer changing the acceptance date from October 16 to October 18, 1993. It must be concluded that the acceptance was signed when it says it was signed.

In terms of when the signed acceptance was provided to Trimble, examination of the evidence as to what notification was provided and when it was provided leads unalterably to the conclusion that respondent both failed to notify Trimble of the discrepancy in the acceptance date and failed to promptly provide him with a copy of the signed acceptance, in violation of secs. RL 24.13, RL 15.02(1) and RL 15.02(2)(b), Code. The testimony of the participants in the transaction is instructive in that regard.

Respondent's testimony (Tr., pp. 61-63).:

> Q. (by Mr. Howden) So you received -- your testimony today is that you received a copy of the signed copy accepted offer either on the 15th or 16th of October, is that right?
>
> A. (by respondent) I believe so. That's when the paperwork was dropped off in to the office.
>
> Q. Did you review it at that time?
>
> A. Yes.
>
> Q. Did you note that there was a discrepancy with the date Ralph Anzivino having said he signed it on the 18th of October?
>
> A. Yes.
>
> Q. What did you do about it?
>
> A. We amended it.

Q. When did you amend it?

A. Prior to clos -- the first closing

Q. Did you -- when you say you amended it, did you get the signature of Mr. Trimble on the amendment?

A. No.

Q. When did you first inform Mr. Trimble that there was a discrepancy of the October 18th date that showed up on the acceptance?

A. Well, that I don't recall. I don't know when that was, but --

Q. Well, was it on the 16th when you called him?

A. I told -- well I called him the very next day, told him we had an accepted offer. We were in contact on a daily basis, after the offer was written. You know, trying to get times and everything set up for the trip up to the property. So he was told the next day, the 15th, that it was accepted. And Joe said he was going to drop off a copy of the accepted offer. So I don't know when he received it, per se. I don't know when Joe delivered it.

Q. Well, you didn't deliver it, is that right?

A. No I did not.

Q. You didn't mail it to him, is that right?

A. That I don't know, I may have.

Q. Well, why would you have mailed it to him if Joe was going to deliver it?

A. Well, it's usually standard practice to put, you know, we either mail it, fax it, or hand deliver it.

Q. But you don't recall if you did any of that?

A. Well, I know I didn't hand deliver it and I know I didn't fax it because there was no fax number. But I may have mailed it, stuck it in the mail. I don't have any receipts of that.

Joe Anzivino's testimony (Exhibit 31, pp. 31-33):

Q. (by Mr. Howden) Where did you take the [offer to purchase] that had been signed by your father, along with all the other copies that he gave to you at that time?

A. Took it back to Wisconsin Real Estate Services

Q. And once you did that, did you give it to Mr. Koszarek?

A. I don't recall I put it where it's supposed to go in our filing system.

Q. Did you forward a copy of the now signed offer, in other words, signed by your father, to Mr. Trimble?

A. I don't really recall.

Q. Well, how would you know whether or not you did? Would you make a note that you had done that?

A. No. I mean . . . I guess you're asking how I would have proven I sent it?

Q. Yes.

A. There's really no way.

Q. Well, apparently, you would have either mailed a copy to Mr. Trimble or brought him one in person; is that right?

A. Yes.

Q. Did you take him one in person?

A. Did I?

Q. Yes.

A. No.

Q. You're sure of that?

A. Well, I'm not sure. I mean -- as far as I recall, I know I didn't, but . . .

Even given that the transaction in question occurred three years before the hearing herein, and the affect that fact may have had on these witnesses' memories, their purposeful evasiveness is evident. Conversely, Mr. Trimble's testimony on the subject was eminently credible. (Tr., pp. 206-207, 209)

Q. (by Mr. Howden) Did [respondent and Joe Anzivino] then inform you that the contract had not been accepted by the 16th?

A. No. No, they -- when I mentioned a copy of that -- I was supposed to receive that the 16th or earlier, and I hadn't received it, so I felt that in that act alone, I wasn't obligated to go on with the -- the purchase. And when I brought that up at one point in time one would say well, Craig must have it. And then at another point in time

Craig would say well, I gave it to Joe. So I got -- I realized I was put in the middle here, so I taped their conversation on the telephone. I had my wife tape one and I taped one, and they just played this game.

Q. Well, the conversation that you had with someone you taped, who was that someone?

A. I taped mine with Craig Koszarek

Q. And when was this?

A. November 2nd, 1993.

Q. And what was said during that conversation by Mr. Koszarek?

A. I asked him if -- I said why aren't you giving me a -- you know, why don't I have a signed copy acceptance here? You know. He gave me that line that Joe must have it.

Q. He said Joe must have it?

A. Yeah. Or something to that nature

Q. What else did he say?

A. Well, they just, you know, weren't very responsive at all to it, and they kept saying I'll get you one, I'll get you one And so I had my wife do the same thing to Joe Anzivino and we taped his conversation and he played the same tune

Q. What tune was that?

A. Well, they were blaming it on each other, you know.

Q. Blaming what on each other?

A. That they didn't deliver the offer -- the accepted offer.

Q. Well, did --

A. I didn't believe at that time they had one.

* * * *

Q. (by Mr. Howden) Did -- do you recall whether or not either Mr. Anzivino, that's Joe Anzivino, the salesperson, or Mr. Koszarek, the broker, did they -- either of them ask you to sign an amendment changing the dates of the acceptance of the offer?

A. On November 24th, when they forced me to buy the property and we had the closing, after everything was finished, Joe, who was on my left side, I could see him

on my left side, sneak up and throw the paper in front of me and ask me to sign it. This was one of these -- to extend the -- the acceptance date. And I told him, I said, I'm not going to sign that. That was the first time -- that was the day, the first time I ever saw a signed acceptance.

There is not merely a preponderance of the evidence that there was no valid acceptance of the Trimble Offer to Purchase, there is clear and convincing evidence that there was not. There is also ample evidence that respondent not only failed to notify Trimble of the discrepancy regarding the acceptance date, but purposefully withheld the signed offer from Trimble until Trimble appeared for the closing.

In failing to redraft the closing statement in the transaction to reflect the actual date of closing, and in failing to prorate the taxes on the property as of the day of closing, respondent has failed in his responsibility for the preparation and correctness of all entries on the closing statement, in violation of sec. RL 17.08(2), Code; and respondent has thereby demonstrated incompetency to act as a broker in a manner which safeguards the interests of the public, in violation of sec. 452.14(3)(i), Stats.

The closing statement utilized in this transaction (Exhibit 8) is dated November 3, 1993, and it is undisputed that it was drafted for the abortive November 3, 1993, closing and was not revised for the closing on November 24, 1993. Also undisputed is that the closing statement prorated the taxes to November 3 rather than to November 24, 1993. Nor was that error merely an oversight. Respondent testified at p. 74 of the hearing transcript as follows:

Q. (by Mr. Howden) Did you amend this closing statement to tax prorate through the November 24th date?

A. We were going to but Mr. [Ralph] Anzivino said that he did not want it changed, because Mr. Trimble did not meet his original closing dates.

Q. Did you inform Mr. Trimble of that?

A. He went through that closing.

Q. Did you explain to him that you were not tax prorating through the date of closing?

A. I don't know whether it was explained to him or not. I mean, he went through the closing statements, signed.

Q. So far as you were concerned that was good enough?

A. That wasn't my decision or choice. That was Ralph's.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich,* 71 Wis. 2d 206 (1976). Punishment of the licensee is not

an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968). In determining appropriate discipline in this case, one is confronted with the question of respondent's intent in terms of his conduct during the course of this transaction. It seems apparent that some of his actions may have been influenced by Ralph Anzivino and the approach the latter individual took to the transaction. As a law professor and contract expert, Mr. Anzivino was certainly in a position to exercise such influence over a relatively inexperienced broker. It could also be argued that respondent's inexperience -- he had held his license for just over two years at the time in question -- itself accounted for his conduct in this transaction. The problem is that his conduct was entirely consistent with an effort to bring this transaction to fruition regardless of the fact that there was not a binding contract. It's impossible to explain away respondent's failure to notify Mr. Trimble of the fact that the acceptance of his offer was executed two days too late or his failure to provide Mr. Trimble with a copy of the accepted offer until Trimble, in apparent desperation, went to closing rather than confront the loss of his earnest money.[1]

Even respondent's handling of the earnest money dispute raises grave questions as to his motives. When confronted with Trimble's demand for a return of his earnest money, and Ralph Anzivino's demand for the money as liquidated damages, respondent, ostensibly at least, did what might seem appropriate in a situation where disbursement authorization is granted within the contract and the parties do not agree: He sought advice from authoritative sources. The manner in which he did that, however, was apparently calculated to render the result that he and the Anzivinos undoubtedly preferred. As set forth in the Findings of Fact, respondent's letter to Trimble giving notice of intent to disburse the earnest money to Anzivino (Exhibit 13) indicates that he was advised to give that notice by the department of Regulation & Licensing, by the Wisconsin Realtors Association Legal Hotline and by an "unbiased real estate attorney." Respondent admitted in his testimony that he had not in fact solicited advice from the department (Tr., p. 86), and conceded that he had not included the discrepancy in the date of the acceptance in his questions either to the Hotline (Tr. p. 83) or to the "unbiased real estate attorney" (Tr. p. 91) who apparently is one of respondent's hockey buddies.

Moreover, there is little in the way of mitigation here. Much was made by respondent of the fact that Trimble sold the cottage two years later for $28,000 -- a profit of $3000. Mr. Trimble's testimony on the circumstances of that sale puts the profit in perspective (Tr., pp. 223, 272-273)

> Q. (by Mr. Howden) Okay. In your opinion, did you incur any financial loss as a consequence of buying and selling this property?
>
> A. Absolutely. I mean, you take and tie up $25,000 in cash and put it over a 20-year period, I get $209 a month. I mean, I can do a lot more with the cash than I can with $209 a month. Sure. But I -- the property's a dog and that's the only way I could sell it. I advertised it.

[1] Mr. Trimble's testimony relating to his decision to close is found at page 216 of the transcript. After Mr. Howden showed the witness respondent's November 12, 1993, letter giving notice of intent to disburse the earnest moneys to Anzivino, Howden asked about Trimble's decision to complete the transaction. Trimble answered: "I was advised by a friend of mine that I would probably be better off going through with the transaction rather than a skunk fight over the $5000. And I wrote this letter to them and gave them five days -- business days to set up a closing."

Q. Did you have any -- do you have any estimate as to the total amount of your loss?

A. Well, I -- it would be an accumulation over the years, but I would say that I didn't make any money on the property because I had to furnish the property with bedroom furniture. I had to -- the water heater had to be repaired That never worked. Some of the flooring had to be dealt with. I mean, you know, I don't think there was any money made on the property, and plus the holding expense.

* * * *

Q. (by Mr. Deutch) And how long did you advertise it before you got a buyer?

A. I advertised it several times, I don't know, over a period of two or three months.

Q. And what price did you advertise it for?

A. I think it was $28,000.

Q. And the eventual buyer was at $28,000, is that correct?

A. Right. But there was a secret -- secret method. You want to know my secret method?

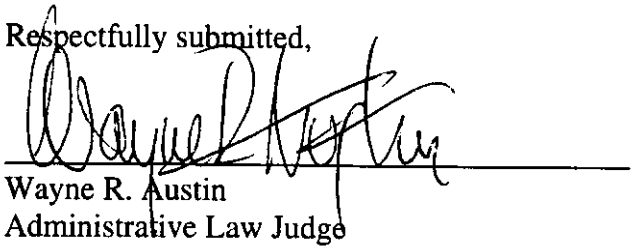
Q. Sure.

A. Will finance. You want to go out on the hook for 20 years, then you can dump something like that.

In the last analysis, it may not be concluded that respondent's conduct in this case was innocent or merely negligent. Rather it must be concluded that his conduct was intended to force an unwilling buyer to closure notwithstanding that no binding contract for sale existed. If so, and in light of the other violations found here, a 60 day suspension of respondent's license is more than fully justified in terms of subserving the cited disciplinary objectives.

Dated this 10th day of February, 1997.

Respectfully submitted,



Wayne R. Austin
Administrative Law Judge

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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	:	ORDER FIXING COSTS
	:	Case # LS9509142REB
CRAIG R. KOSZAREK, RESPONDENT.	:	

On June 26, 1997, the Real Estate Board filed its Final Decision and Order in the above-captioned matter by which the board ordered that pursuant to sec. 440.22, Wis. Stats., 100% of the costs of this proceeding be assessed against respondent. Pursuant to sec. RL 2.18 (4), Wis. Adm. Code, on July 16, 1997, the Real Estate Board received the *Affidavit of Costs* in the amount of $7,830.80, filed by Attorney Charles J. Howden. On July 2, 1997, the Real Estate Board received the *Affidavit of Costs of Office of Board Legal Services* in the amount of $3,549.29, filed by Administrative Law Judge Wayne R. Austin. The Real Estate Board considered the affidavits on August 28, 1997, and orders as follows:

ORDER

NOW, THEREFORE, IT IS ORDERED that pursuant to sec. 440.22, Wis. Stats., the costs of this proceeding in the amount of $11,380.09, which is 100% of the costs set forth in the affidavits of costs of Attorney Charles J. Howden and Administrative Law Judge Wayne R. Austin, which are attached hereto and made a part hereof, are hereby assessed against respondent, and shall be payable by him to the Department of Regulation and Licensing. **Failure of respondent to make payment on or before September 28, 1997, shall constitute a violation of the Order unless respondent petitions for and the board grants a different deadline.** Under sec. 440.22 (3), Wis. Stats., the Real Estate Board may not restore, renew or otherwise issue any credential to the respondent until respondent has made payment to the department in the full amount assessed.

To ensure that payments for assessed costs are correctly receipted, the attached *"Guidelines for Payment of Costs and/or Forfeitures"* should be enclosed with the payment.

Dated this 28th day of August, 1997.

REAL ESTATE BOARD

By: _____
A Member of the Board

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

LS9509142REB

CRAIG R. KOSZAREK

Respondent

AFFIDAVIT OF COSTS
OFFICE OF BOARD LEGAL SERVICES
(SEC. 440.22, STATS.)

STATE OF WISCONSIN)
)ss.
COUNTY OF DANE)

Wayne R. Austin, 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 Wisconsin Department of Regulation & Licensing, Office of Board Legal Services.

2. In the course of his employment, your affiant was assigned as administrative law judge in the above-captioned matter.

3. Set out below are the actual costs of the proceeding for the Office of Board Legal Services in this matter. Unless otherwise noted, all times for the preparation of documents reflect the actual document preparation and editing time as reflected in the statistical summary program included with Microsoft Word for Windows version 6.0.

ADMINISTRATIVE LAW JUDGE EXPENSE -- WAYNE R. AUSTIN

DATE & TIME SPENT	ACTIVITY
6/26/95, 10/5/95, 10/24/95, 11/1/95 & 3/7/96 2 hours	Draft Scheduling Notices
7/10/96 26 minutes	Draft Order Permitting Response

7/15/96 to 7/23/96 6 hours, 20 minutes	Draft Order Denying Motion
10/9/96 7 hours, 12 minutes	Conduct Hearing
10/22/96 5 hours, 35 minutes	Conduct Hearing
1/10/97 to April 25, 1997 16 hours, 42 minutes	Prepare Proposed Decision

Total Time Spent..... .....38 hours 15 minutes

Total administrative law judge expense for Wayne R. Austin:
38 hours, 15 minutes @ $43.55 salary and benefits:.....**$1665.79**

REPORTER EXPENSE -- MAGNE-SCRIPT

DATE & TIME SPENT	ACTIVITY
10/9/96 9:30 a.m. to 5:42 p.m.	Attend Hearing Transcribe 292 pages
10/22/96 9:30 a.m. to 4:05 p.m.	Attend Hearing Transcribe 203 pages

Total billing from Magne-Script reporting
service (Invoice #10234 & 10302, dated 10/22/96 and 12/2/96):..... ....**$1883.50**

TOTAL ASSESSABLE COSTS FOR OFFICE OF BOARD LEGAL SERVICES: **$3549.29**

Wayne R. Austin
Administrative Law Judge

Sworn to and subscribed before me this 2nd day of July, 1997.

Donald R. Rittel
Notary Public, State of Wisconsin
My commission is permanent

WRA:9707024.doc

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
CRAIG R. KOSZAREK,	:	(Wis. Stats. Sec. 440.22)
RESPONDENT.	:	LS 9509142 REB

STATE OF WISCONSIN)
) ss
COUNTY OF DANE)

Charles J. Howden, being first duly sworn on oath, deposes and states as follows:

1. I am an attorney for the State of Wisconsin Department of Regulation and Licensing, Division of Enforcement, assigned to the above-mentioned matter.

2. Pursuant to Wis. Stats. sec. 440.22, the Real Estate Board assessed the costs of the proceeding against the Respondent Craig R. Koszarek following the entry of the final order in case number LS 9509142 REB.

3. Costs of that matter include those set forth below:

INVESTIGATIVE EXPENSE

Investigator Jack Johnson

DATE	ACTIVITY	TIME
December 1, 1993	Review complaint/correspondence	.60 hours
December 10, 1993	Correspondence	.30 hours
December 16, 1993	Review correspondence	.20 hours
December 20, 1993	Correspondence	.20 hours
December 23, 1993	Review tape	.30 hours
December 30, 1993	Correspondence	.10 hours
January 20, 1994	Correspondence	.10 hours
January 27, 1994	Review correspondence	.10 hours
February 28, 1994	Summary of case	2.50 hours
March 14, 1994	Phone conference	.30 hours
March 17, 1994	Interview	1.00 hours
March 22, 1994	Memo	.20 hours
May 4, 1994	Prepare case for PIC	2.50 hours
June 16, 1994	Phone conference	.20 hours

June 20, 1994	Memo	.15 hours
June 22, 1994	Correspondence	.15 hours
July 6, 1994	Correspondence	.15 hours
August 17, 1994	Interview/travel	2.00 hours
August 18, 1994	Interview	1.00 hours
August 23, 1994	Memos	1.50 hours
September 28, 1994	Review of file and revision of summary	2.00 hours
February 15, 1996	Appear for deposition	1.00 hours
February 22, 1996	Appear for deposition/travel	3.00 hours
October 22, 1996	Preparation and testimony at hearing	2.00 hours

Investigator Angi Jerney

DATE	ACTIVITY	TIME
February 15, 1995	Preparation/travel and assistance at depositions	10.00 hours
February 22, 1995	Travel and assistance at depositions	9.00 hours
November 21, 1995	Interview/travel	3.00 hours
November 30, 1995	Correspondence	.50 hours
December 27, 1995	Interview	3.00 hours
December 29, 1995	Memorandum	.50 hours
January 5, 1996	Memorandum	.50 hours
April 8, 1996	Review and sign amended complaint	.25 hours
September 25, 1996	Service of subpoena	.50 hours
October 7 & 8, 1996	Assistance with preparation of exhibits for hearing	8.00 hours
October 9, 1996	Assistance at hearing	7.50 hours
October 21, 1996	Assistance in preparation for second day of hearing	7.00 hours
October 22, 1996	Assistance at hearing	7.00 hours

TOTAL INVESTIGATIVE TIME 78.3 hours

Total investigator time at $20.00 per hour = $1,566.00

ATTORNEY FOR PROSECUTION TIME

DATE	ACTIVITY	TIME
July 5, 1995	Review of file	1.00 hours
July 6, 1995	Continue review of file and commencement of drafting the stipulation	2.50 hours
July 13, 1995	Final draft of stipulation, Final Decision and Order and correspondence	1.50 hours
August 11, 1995	Review	.20 hours
August 23, 1995	Research	.50 hours
September 6, 1995	Drafting/complaint/notice	2.50 hours

September 27, 1995	Correspondence	.10 hours
October 2, 1995	Correspondence	.20 hours
October 5, 1995	Prehearing	.25 hours
October 5, 1995	Correspondence	.20 hours
October 5, 1995	Phone conference	.40 hours
October 11, 1995	Correspondence	.20 hours
October 19, 1995	Correspondence	.20 hours
October 20, 1995	Correspondence	.20 hours
October 23, 1995	Correspondence, work on file	.50 hours
October 24, 1995	Pretrial	.25 hours
November 1, 1995	Pretrial	.25 hours
November 2, 1995	Memorandum and review	.75 hours
November 9, 1995	Correspondence	.20 hours
November 11, 1995	Correspondence	.20 hours
November 15, 1995	Memorandum/List	1.50 hours
November 15, 1995	Correspondence	.20 hours
November 16, 1995	Correspondence	.20 hours
November 21, 1995	Interview	3.00 hours
December 5, 1995	Conference	2.00 hours
January 9, 1996	Phone conference	.25 hours
January 19, 1996	Work on witness list	1.00 hours
January 22, 1996	Correspondence	.50 hours
January 23, 1996	Correspondence	.20 hours
January 24, 1996	Memorandum	.50 hours
January 29, 1996	Correspondence	.20 hours
January 31, 1996	Correspondence	.20 hours
February 8, 1996	Correspondence	.20 hours
February 8, 1996	Preparation deposition	2.00 hours
February 15, 1996	Depositions	8.00 hours
February 21, 196	Preparation for depositions	1.50 hours
February 22, 1996	Depositions	7.00 hours
February 26, 1996	Correspondence	.20 hours
February 27, 1996	Correspondence	.20 hours
February 27, 1996	Correspondence	.20 hours
February 28, 1996	Conference	1.00 hours
February 29, 1996	Correspondence	.20 hours
February 29, 1996	Correspondence	.20 hours
March 1, 1996	Review/Drafting/Research	4.00 hours
April 8, 1996	Drafting amended complaint	4.00 hours
April 15, 1996	Correspondence	.20 hours
April 18, 1996	Prehearing	.25 hours
April 23, 1996	Correspondence	.50 hours

May 1, 1996	Review answer/status	1.00 hours
May 2, 1996	Correspondence	.20 hours
May 28, 1996	Memorandum	1.00 hours
May 28, 1996	Work on motion	3.00 hours
June 14, 1996	Continue work on memorandum/motion/affidavit/correspondence	6.00 hours
June 24, 1996	Correspondence	.20 hours
June 27, 1996	Correspondence	.50 hours
July 5, 1996	Correspondence	.20 hours
July 8, 1996	Correspondence	.20 hours
July 10, 1996	Review order	.20 hours
July 19, 1996	Correspondence	.50 hours
July 22, 1996	Correspondence	.50 hours
July 23, 1996	Review file and order	.50 hours
August 14, 1996	Witness list	.50 hours
August 16, 1996	Correspondence	.20 hours
August 20, 1996	Correspondence	.20 hours
August 21, 1996	Correspondence	.20 hours
September 4, 1996	Correspondence	.20 hours
September 5, 1996	Correspondence	.20 hours
September 5, 1996	Subpoenas	1.50 hours
September 6, 1996	Review/Conference	1.50 hours
September 20, 1996	Correspondence	.20 hours
September 26, 1996	Correspondence	.20 hours
September 26, 1996	Subpoena	.50 hours
September 27, 1996	Correspondence	.20 hours
September 29, 1996	Subpoena	.50 hours
September 30, 1996	Prehearing	.10 hours
October 3, 1996	Correspondence	.20 hours
October 7 & 8, 1996	Preparation for hearing	8.00 hours
October 9, 1996	Hearing	7.50 hours
October 21, 1996	Preparation for hearing	6.00 hours
October 22, 1996	Hearing and preparation	7.00 hours
February 10, 1997	Review of proposed decision	1.00 hours
February 10-20, 1997	Work on objections to proposed decision	4.00 hours
March 6, 1997	Response to Respondent's objections	2.00 hours
March 19, 1997	Correspondence	.20 hours

TOTAL ATTORNEY TIME 106.6 hours

Total prosecution time at $41.00 per hour = $4,370.60

Additional Expenses

Trimble witness fee	$60.00
Bergum witness fee	$116.40
Bergum motel fee	$52.00
Expert witness fee	$900.00
Deposition fees	$1,065.80
Total of Additional Expenses	$2,194.20
Total assessable cost for Division of Enforcement	$8,130.80
Less $300.00 assessed to Joseph Anzivino	
Total remaining:	**$7,830.80**

Charles J. Howden
Attorney for Division of Enforcement

Sworn to and subscribed before
me this 16th day of July, 1997.

Notary Public
State of Wisconsin
My Commission is Permanent.

CH:kcb

Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935
(608)
TTY# (608) 267-2416 hearing or speech
TRS# 1-800-947-3529 impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On June 25, 1997, the Real Estate Board took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a forfeiture.

The amount of the costs assessed is: $11,380.09 Case #: LS9509142REB

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of $ 11,380.09

The costs and/or forfeitures are due: September 28, 1997

NAME: Craig R. Koszarek LICENSE NUMBER: 45035

STREET ADDRESS: 136 West Uncas Avenue

CITY: Milwaukee STATE: WI ZIP CODE: 53207

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

_____

For Receipting Use Only

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)
Ch. 440.22, Stats.
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