

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

DALE W. JOHNSON,
RESPONDENT

FINAL DECISION AND ORDER
LS0004251REB

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 Division of Enforcement and Administrative Law Judge are hereby directed to file their affidavits of costs with the Department General Counsel within 15 days of this decision. The Department General Counsel shall mail a copy thereof to respondent or his or her representative.

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

Richard E. Hinsman
A Member of the Board

Dated this 24th day of August, 2000

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF

DISCIPLINARY PROCEEDINGS AGAINST

DALE W. JOHNSON

PROPOSED DECISION

Respondent

LS0004251REB

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

Dale W. Johnson

235 Cedar Drive West

Hudson, WI 54016

Department of Regulation & Licensing

Division of Enforcement

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

State of Wisconsin Real Estate Board

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708

A Class II hearing was conducted in the above-captioned matter on July 27, 2000, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Gerald M. Scanlan. The respondent neither answered the Complaint nor appeared for hearing. He was therefore ruled to be in default pursuant to sec. RL 2.14, Code, and the prosecution presented evidence establishing a prima facie case.

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

FINDINGS OF FACT

1. Dale W. Johnson (Johnson), date of birth 1/29/44, is licensed in the State of Wisconsin as a real estate broker by license # 47680, granted on 11/29/94. Johnson's most recent address on file with the Department of Regulation and Licensing is 235 Cedar Drive West, Hudson, WI 54016.
2. At all times relevant to the facts contained herein, Johnson was the real estate broker for and owner of Western Wisconsin Real Estate & Appraisal Co. located at 235 Cedar Dr. West, Hudson, WI 54016. He was also the Chairman of the Board and principal of a corporation doing business as Johnson Quality Services, Inc.
3. On or about March 5, 1998, Edward and Julie Mealy entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Johnson for the sale of their property located at 480 Green Mill Lane, Hudson, WI. The listing price was \$149,500.00. The term of the contract was from March 5, 1998, to May 16, 1998. The commission was 6 percent if earned under the terms of the contract. The Mealys also signed a Disclosure Of Real Estate Agency With Consent To Multiple Representation form on the date of the listing.
4. Johnson failed to procure a buyer or otherwise earn the right to claim a commission for his real estate activities on behalf of the Mealy property during the listing period. The listing agreement expired on May 16, 1998, and was not renewed.
5. On or about August 3, 1998, real estate licensee Jason Bast of Edina Realty, Hudson, Wisconsin, drafted a Vacant Land Offer To Purchase on behalf of the Mealys for Lot 36, Final Plat of Countrywood, Troy, Wisconsin.

The purchase price was \$49,900.00 with closing to occur no later than August 24, 1998. The seller, Richard Stout, accepted this offer on August 4, 1998.

6. The transaction in paragraph 5, above, closed August 25, 1998, with broker's commission in the amount of \$4,990.00 paid to Edina Realty Inc.

7. On or about September 26, 1998, The Mealys received an itemized "Invoice For Services Rendered" from Johnson d/b/a/ Western Wisconsin Real Estate & Appraisal Co. totaling \$11, 524.75. The Invoice reads as follows:

"2-20-98 Appraisal of 480 Green Mill lane, Town of Hudson..... \$325.00,

(In well water advisory zone)

1-7-98 thru 7-20-98 Consulting on various real estate matters while 480 Green Mill Ln. was under construction/partial renovation - 67 1/2 hours @ regular consulting rate of \$115.00 per

hour..... \$ 7,762.50.

Out of pocket expenses: Postage/telephones/film & photo developing/vehicle expenses/office supplies/multiple forms/hundreds of photocopies/courthouse research/Multiple Listing Service membership/faxing expenses/licenses expense/continuing education expense/membership in Board of Realtors'.....\$917.25

3-18-98 Preparation/Presentation of multiple-contingency Vacant Land Offer to Purchase Lot #35, Humbird Hills Subdivision, Town of Hudson - 4 hours @ \$115/hr.....\$460.00

6-25-98 Preparation/Presentation of multiple-contingency Vacant Land Offer to Purchase Lot #39, Humbird Hills Subdivision, Town of Hudson - 4 hours @ \$115/hr.....\$460.00

7-1-98 Finder's Fee on Lot #36, Country Wood First Addition to the Town of Troy - I furnished Country Wood Plat and Topographical Maps & Country Wood Covenants in detail; Purchased 8-26-98.....\$1,600.00

TOTAL DUE \$11,524.75

PLEASE NOTE: A FINANCE CHARGE OF 1.5% WILL BE ADDED MONTHLY TO THE ENTIRE UNPAID BALANCE. SAID FINANCE CHARGE REPRESENTS AN ANNUAL PERCENTAGE RATE OF 18.0%".

8. The only contract that the Mealys ever had with Johnson was the March 5, 1998, Listing Agreement under the terms of which Johnson earned no right to a commission. There was never any other agreement by the Mealys to pay for the services set forth in paragraph 7, above.

9. On or about October 25, 1998, the Mealys received a second Invoice For Services Rendered from Johnson d/b/a/ Western Wisconsin Real Estate & Appraisal Co. This invoice is a duplicate of the September 26,1998, invoice but at the bottom it reads;

RE-Billing OF 10-25-98: ".....and the labourer is worthy of his hire.

UNPAID BALANCE BROUGHT FORWARD FROM 9-26-98, PLUS MONTHLY FINANCE CHARGE OF \$172.87 ADDEDPAST DUE: \$11,697.62.

10. On or about January 25, 1999, the Mealys received a document headed "Consulting Services Invoice" from Johnson d/b/a/ Johnson Quality Services, Inc., with a sub-heading reading "Re-billing of 1-25-99 for Various Consulting Services." The invoice shows a total of \$10,188.83 due. A hand written note at the bottom of the invoice reads; "These are being turned over for collection in 10 days unless you make payment !"

11. On or about January 25, 1999, the Mealys received a document headed "Appraisal Invoice" from Johnson d/b/a/ Johnson Quality Services, Inc., with a sub-heading reading "Re-Billing on 1-25-99 for Appraisal Services." The invoice shows "Delinquent Amount Now Payable: \$344.95". At the bottom of the invoice there is a notation that reads; "A finance charge of 1.5% will be added each month to the entire delinquent balance left unpaid. This finance charge is an annual percentage rate of 18.0%. Thank You!"

12. On or about January 25, 1999, the Mealys received an invoice from Johnson d/b/a/ Western Wisconsin Real Estate Co., headed, "DELINQUENT FINDER'S FEE ON LOT # 36, COUNTRY WOOD FIRST ADD'N". The invoice states; "SERIOUSLY PAST DUE: \$1,698.17". At the bottom of the invoice there is a notation that reads: "PLEASE NOTE: A finance charge of 1.5% will be added on each month to the entire delinquent balance you leave unpaid. This finance charge is an annual percentage rate of 18.0%. Thank You !"

13. On or about June 24, 1999, the Mealys received an invoice from Johnson d/b/a/ Western Wisconsin Real Estate Co., headed, "DELINQUENT FINDER'S FEE ON LOT # 36, COUNTRY WOOD FIRST ADD'N". This invoice lists previous invoices sent to the Mealys in the matter and shows a new total, "NOW DUE: \$1,829.40."

14. On or about June 24, 1999, the Mealys received a "CONSULTING SERVICES INVOICE" from Johnson d/b/a/ Johnson Quality Services, Inc., stating, "RE-BILLING OF 1-25-99 FOR VARIOUS CONSULTING SERVICES". The invoice lists previous invoices sent to the Mealys regarding this matter and shows a new total "DUE NOW \$10,976.17

15. On or about June 24, 1999, the Mealys received an "APPRAISAL INVOICE" from Johnson d/b/a/ Johnson Quality Services, Inc. The Invoice lists previous invoices sent to the Mealys in the matter and shows a new total "DUE NOW \$371.60

16. On or about August 24, 1999, Johnson d/b/a/ Western Wisconsin Real Estate Co. forwarded a "NOTICE OF INTENTION TO FILE CLAIM FOR LIEN" to the Mealys for a "REAL ESTATE FINDER'S FEE ON LOT TO PURCHASE" in the amount of \$1,884.69. The intended lien was to be against Mealys real estate located at 480 Green Mill Lane, Hudson, WI.

17. On or about August 24, 1999, Johnson d/b/a/ Johnson Quality Services Inc. forwarded a "NOTICE OF INTENTION TO FILE CLAIM FOR LIEN" to the Mealys for "REAL ESTATE CONSULTING/VALUATION SERVICES" in the amount of \$11,307.92. The intended lien was to be against Mealys real estate located at 480 Green Mill Lane, Hudson, WI.

18. On or about August 24, 1999, Johnson d/b/a/ Johnson Quality Services, Inc. forwarded a "NOTICE OF INTENTION TO FILE CLAIM FOR LIEN" to the Mealys for "REAL ESTATE APPRAISAL" in the amount of \$382.83. The intended lien was to be against Mealys real estate located at 480 Green Mill Lane, Hudson, WI

19. Throughout the Department's investigation, Johnson refused to answer Investigator Marsha Davidson's correspondence requesting him to produce records and provide information regarding the above matter. On or about November 5, 1999, the Department of Regulation and Licensing, Division of Enforcement had Johnson served with a Subpoena Ducus Tecum by the St. Croix County Sheriff's Department requiring him to appear on December 9, 1999, at the Department and to produce his real estate records and answer Investigator Davidson's questions pertaining to the Mealys complaint. Johnson did not appear.

CONCLUSIONS OF LAW

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

2. By engaging in the course of conduct set forth in Findings of Fact numbered 3 through 19, respondent has failed to represent the interests of his client as an agent, in violation of sec. RL 24.025(1), Code; has attempted to provide brokerage services to a client without an agency agreement authorizing those brokerage services, in violation of sec. RL 24.025(2), Code; has failed to act to protect the public against fraud, misrepresentation and unethical practices, in violation of sec. RL 24.03(2)(b), Code; has failed to disclose all material adverse facts that the licensee knows and that a party does not know or cannot discover through a reasonably vigilant observation, in violation of sec. RL 24.07(2), Code; has failed to loyally represent the client's interests, in violation of sec. 452.133(2)(a), Stats.; has acted in a transaction on the broker's own behalf without the written consent of his client, in violation of sec. 452.133(3)(b), Stats.; has been guilty of other conduct which constitutes improper, fraudulent or dishonest dealing, in violation of sec. 452.14(3)(k), Stats; and has failed to retain for at least 3 years exact and complete copies of all listing contracts, offers to purchase, leases, closing statements, deposit receipts, canceled checks, trust account records and other documents or correspondence received or prepared by the broker in connection with any transaction, in violation of sec. RL 15.04, Code. 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 Dale W. Johnson to act as a real estate broker in the State of Wisconsin be, and hereby is, revoked.

IT IS FURTHER ORDERED that pursuant to sec. 440.26, Stats., the costs of this proceeding shall be assessed against the respondent.

OPINION

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).

Respondent's actions and conduct in the series of events described herein are completely antithetical to the tenets and principals set forth in the rules at ch. RL 24, Code, requiring that a broker represent his client's interests rather than his own. Respondent has offered no evidence in justification or mitigation of his actions, and there is therefore nothing in this record to explain

his outrageous conduct. Accordingly, it is concluded that the protection of the public requires nothing less than that respondent's license be revoked.

Respectfully submitted,

Wayne R. Austin

Dated this 14th day of August, 2000

Administrative Law Judge