

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN**

**BEFORE THE REAL ESTATE BOARD**

**IN THE MATTER OF THE DISCIPLINARY**

**PROCEEDINGS AGAINST:**

**ANTHONY J. BOGDANOVICH,**

**RESPONDENT**

**FINAL DECISION AND ORDER**

**LS0005171REB**

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Anthony J. Bogdanovich

1445 White Horse Lane

Saint Germain, WI 54558

Wisconsin Real Estate Board

P.O. Box 8935

Madison, WI 53708

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

**FINDINGS OF FACT**

1. **Anthony J. Bogdanovich** ("Bogdanovich"), date of birth 06/14/55, is licensed in the State of Wisconsin as a real estate broker having license # 90-44703. This license was first granted to him on January 5, 1991. The last address on file with the Department of Regulation and Licensing for Bogdanovich is 1445 White Horse Lane, Saint Germain, Wisconsin 54558.
2. On or about November 10, 1994, Evonne J. Sawallish and Larry R. Sawallish entered into a VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL agreement with Bogdanovich for the sale of vacant land in Oneida County, Wisconsin. The commission called for by the listing contract was 20 percent of the selling price or a minimum of \$1,000.00. The listing price was \$7,400.00.
3. Bogdanovich never viewed the listed property in the company of either Evonne J. Sawallish or Larry R. Sawallish.
4. On or about November 10, 1994, Bogdanovich erected a "For Sale" sign on the Sawallish property. This sign

indicated that the property was for sale through Bogdanovich's real estate office that was known as LAKELAND LAND COMPANY.

5. On or about November 13, 1994, Bogdanovich faxed to Mary Ellen Poggemann, a real estate broker employed by Williams Realty of Minocqua, Inc., a map of the Sawallish property. This map is drawn grossly out of scale to the actual size of the Sawallish property listed with Bogdanovich. In addition, the map shows a "pond" as existing on the property. A copy of this fax is attached hereto as **Exhibit A** and hereby made a part of this complaint by reference.

6. On or about November 14, 1994, Bogdanovich faxed to Mary Ellen Poggemann, a real estate broker employed by Williams Realty of Minocqua, Inc., information describing the Sawallish property as being "5 ACRES W/POND \$7400.00." A copy of this fax is attached hereto as **Exhibit B** and hereby made a part of this complaint by reference.

7. The property, in fact, consists of 3.8 acres and the pond is on property owned by another party.

8. Poggemann, as a broker representing the seller as a subagent of Bogdanovich provided a copy of these faxes to Ann M. Luckert, a potential purchaser of the property.

9. On or about November 14, 1994, Ann M. Luckert offered to purchase the Sawallish property by signing a WB-13 VACANT LAND OFFER TO PURCHASE drafted by Poggemann. A copy of this Vacant Land Offer to Purchase is attached hereto as **Exhibit C**, and hereby made a part of this complaint by reference. The offer price was \$7,400.00. The offer states, in part, that:

"Seller to flag lot lines or mark corners within 7 days of acceptance so perk can be done in correct location."

10. The Sawallishes accepted the Luckert offer on November 15, 1994.

11. The Sawallish to Luckert transaction closed on December 20, 1994. A copy of the *Seller's Closing Statement* for this transaction is attached as **Exhibit D**, and hereby made a part of this complaint by reference.

12. In preparation for the closing and as agent for the Sawallishes, on or about November 22, 1994, Bogdanovich located and flagged what he believed to be the east and west boundaries of the Sawallish property.

13. The lot lines as located and flagged by Bogdanovich were grossly in error.

14. Prior to closing, Luckert viewed the boundary flagging Bogdanovich placed on the property.

15. Relying upon Bogdanovich's boundary markers, Luckert signed a "NOTICE RELATING TO CONTRACT OF SALE" dated December 9, 1994 which states, in part: "Seller has flagged lot lines – Buyer has view (sic) and is satisfied." A copy of this Notice is attached as **Exhibit E**, and hereby made a part of this complaint by reference.

16. Luckert relied upon the boundary marking done by Bogdanovich in locating the site of her new home on the purchased property.

17. After initiating construction on her new home, Luckert became aware of the fact that the western lot line of her property had been improperly marked by Bogdanovich and that her house was, in part, constructed on property owned by Harvey Hoy.

18. Subsequent to finding that the western lot line had been marked in error, Luckert became aware that Bogdanovich had also erroneously marked the eastern boundary and as a result, her driveway had been partially placed on land owned by others.

19. Subsequent to the closing, Luckert and Hoy engaged a registered land surveyor to survey their mutual boundary. Land surveyors Foltz and Associates, Inc., surveyed the boundary and created a survey map dated June 29, 1995 identifying the location of the Luckert house construction in relation to the property boundary between Hoy and Luckert. A copy of a portion of this survey map is attached hereto as **Exhibit F**, and is hereby made a part of this document by this reference.

20. Subsequent to the June 29, 1995 survey, Luckert and Hoy entered into an agreement to create a new common boundary between them through an exchange of lands. Foltz and Associates, Inc., created a new survey to identify this new boundary and also to identify on a map both the east and west erroneous boundaries as represented by Bogdanovich. A copy of this second property survey, dated February 16, 1996 is attached hereto as **Exhibit G**, and is hereby made a part of this document by this reference.

21. On or about August 15, 1996 Luckert commenced a lawsuit in the Circuit Court for Oneida County, Wisconsin against Bogdanovich and the Sawallishes. This lawsuit was based, in part, upon Bogdanovich's misrepresentation, as agent of the Sawallishes, of the property boundary location between the Sawallish property, the Hoy lands to the west and the property to the east. Subsequently, Bogdanovich asserted a Cross-claim in this action against

his principals, the Sawallishes.

22. On or about September 13, 1996, Bogdanovich also commenced a Third Party Action against Hoy. This action was subsequently dismissed. Hoy incurred approximately \$3,000.00 in attorney fees in defending himself against Bogdanovich. Hoy also incurred approximately \$350.00 in survey fees for payment of a portion of the survey costs for the boundary survey performed by Foltz and Associates, Inc.

23. On or about January 9, 1998 the civil action between Luckert, Bogdanovich and the Sawallishes, was settled with an agreed payment of \$6,000.00 to Luckert. Of this settlement amount, Bogdanovich paid \$3,500.00 and the Sawallishes paid \$2,500.00.

24. At no time relevant hereto was Bogdanovich registered as a land surveyor in the State of Wisconsin.

25. The locating of property boundaries by Bogdanovich under the circumstances described above constitutes land surveying as defined by section 443.01(4) of the Wisconsin Statutes and section A-E 7.02 of the Wisconsin Administrative Code.

26. As a result of the actions of Bogdanovich, the Sawallishes were damaged financially in the following respects:

- a. Payment of legal fees to defend themselves in the lawsuit brought by Luckert and the cross-claim brought against them by Bogdanovich.
- b. Payment of a cash settlement of \$2,500.00 to Luckert.

27. As a result of the actions of Bogdanovich, Luckert was damaged financially in the following respects:

- a. Payment of the services of a registered land surveyor to survey her parcel and portions of adjoining property owned by neighbors to the east and west.
- b. Payment for the purchase of easement rights from the owners of adjoining property.
- c. Payment of legal fees to negotiate with adjoining landowners and the Department of Natural Resources.
- d. Payment of additional building costs caused by delay in completion of her new home.
- e. Loss of acreage and the pond that Bogdanovich represented as being on the Sawallish parcel.
- f. Loss of property she was required to exchange with the property owner to the west so as to allow construction of her home to continue.
- g. Rental of living accommodations caused by delay in construction of the house.
- h. Payment of legal expenses in bringing civil action against Bogdanovich and the Sawallishes.

28. As a result of the actions of Bogdanovich, Hoy was damaged financially in the following respects:

- a. Payment of legal expenses in defending a civil action brought against him by Bogdanovich which was eventually dismissed
- b. Payment of survey and travel expenses related to negotiating a resolution of the boundary problem.

#### **MITIGATION OF RESPONDENT'S CONDUCT**

29. In an effort to resolve this Disciplinary Proceeding and as a further effort to compensate the consumers harmed by his actions in this matter, Respondent has offered to pay the following payments to Larry Sawallish, Evonne Harr (formally Evonne Sawallish), Ann Luckert and Harvey Hoy:

- a. \$1,500.00 to Larry R. Sawallish;
- b. \$1,500.00 to Evonne J. Harr;
- c. \$5,000.00 to Ann M. Luckert; and
- d. \$3,000.00 to Harvey L. Hoy.

Respondent's payments to these individuals in the above amounts are to be made by unconditional and unrestricted personal check. These checks accompany the Stipulation in this matter. These checks will be forwarded to the above named individuals by the Department of Regulation and Licensing within ten days of the date of this Final Decision and Order as set forth below.

## CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14, Wis. Stats.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.
3. The locating of property boundaries under the circumstances described above constitutes land surveying as defined by section 443.01(4) of the Wisconsin Statutes and section A-E 7.02 of the Wisconsin Administrative Code.
4. Respondent **Anthony J. Bogdanovich** has violated:
  - a. Sections 452.133(1)(b) and 452.14(3)(L) of the Wisconsin by failing to diligently exercise reasonable skill and care in providing brokerage services to Sawallishes and Luckert in the above transaction.
  - b. Sections 443.01(4) and 452.14(3)(i) of the Wisconsin Statutes and section RL 24.17(1) of the Wisconsin Administrative Code by locating property boundary lines of the Sawallish property at a time that he was not licensed as a registered land surveyor under section 443.02(4)(a) of the Wisconsin Statutes.

## ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Respondent **Anthony J. Bogdanovich**, license #90-44703, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Anthony J. Bogdanovich**, license #90-44703, prior to December 31, 2001, successfully complete the following course modules out of the prelicensing educational requirements for applicants for an original real estate broker's license, as set forth in Section RL 25.02 of the Wisconsin Administrative Code, and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935:

1. Contracts, RL 25.02(2)(a);
2. Business Ethics, RL 25.02(2)(g); and
3. Consumer Protection, RL 25.02(h).

None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent **Anthony J. Bogdanovich**, fails to successfully complete the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Anthony J. Bogdanovich**, his real estate license shall remain suspended, without further notice, hearing or Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **Anthony J. Bogdanovich**, pay **PARTIAL COSTS** of this matter in the amount of \$2,000.00 within 30 days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent **Anthony J. Bogdanovich**, fails to pay the \$2,000.00 partial costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Anthony J. Bogdanovich**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order.

IT IS FURTHER ORDERED, that investigative file 99 REB 007 and formal disciplinary file LS 0005171 REB be, and hereby are, closed.

Dated: April 26<sup>th</sup>, 2001.

Richard Hinsman

A member of the Board