

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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# FILE COPY

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
GLENA DARLENE ZIETZ,	:	
RESPONDENT.	:	

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

Glena Darlene Zietz  
1018 East Chippewa Avenue  
Bruce, WI 54819

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

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

The rights of a party aggrieved by this decision to petition the board for rehearing and to petition for judicial review are set forth in the attached "Notice Of Appeal Information".

A disciplinary hearing was conducted in this matter before a hearing examiner on November 9, 1989. Richard Castelnuovo, attorney with the Department of Regulation and Licensing, Division of Enforcement, appeared for the complainant. Glena Darlene Zietz, respondent herein, appeared in person and without legal counsel. The hearing examiner issued a Proposed Decision in the matter on January 4, 1990. Complainants attorney filed objections thereto on January 8, 1990.

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

## FINDINGS OF FACT

1. Glena Darlene Zietz (respondent), 1018 East Chippewa Avenue, Bruce, Wisconsin 54819 is licensed as a real estate broker in the State of Wisconsin by license #41782, granted on May 26, 1987.

2. On or about April 30, 1987, respondent completed and signed her "APPLICATION FOR NEW SALESPERSON OR BROKER LICENSE", attesting upon oath and affirmation that the answers set forth in the application were true and correct to the best of her knowledge and belief.

3. Respondent answered "no" to question 8a. on the application which asked "Have you ever been convicted of a felony or misdemeanor (excluding speeding tickets)?"

4. On or about November 17, 1977, in the Circuit Court for St. Croix County, Wisconsin, respondent was convicted on her plea of guilty on three counts of forgery in violation of Wis. Stats. sec. 943.38(1), committed on August 30, September 7, and September 9, 1977. She was further adjudged guilty as convicted, was initially placed on probation, and was subsequently committed to the Taycheedah Correctional Institution for an indeterminate term of not more than 15 months.

5. The circumstances of the forgery conviction involved three separate instances of forging the signature of the payor on checks made payable to respondent.

6. On or about February 5, 1981, in the Circuit Court for Barron County, Wisconsin, respondent was convicted on her plea of guilty of the crime of issuing a worthless check in violation of Wis. Stats. sec. 943.24, committed on or about June 9, 1978. She was further adjudged guilty as convicted, was initially placed on probation, and was subsequently sentenced to 30 days in the county jail to run concurrent with another sentence.

7. Respondent's conviction of crimes in violation of Wis. Stats. sections 943.38(1) and 943.24 constitutes a conviction of a felony or misdemeanor other than a speeding ticket, within the meaning of question 8a. of respondent's application for a broker license.

8. The circumstances of respondent's conviction for the crime of forgery and the circumstances of respondent's conviction for the crime of issuing a worthless check substantially relate to the circumstances of the practice of a real estate broker.

9. In information provided to the Department of Regulation and Licensing during its investigation of the complaint, respondent made material misstatements, including the false statement that she had never been convicted of a crime.

#### CONCLUSIONS OF LAW

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

2. Respondent's conviction of crimes in violation of Wis. Stats. sections 943.24, constitutes a conviction of a felony or misdemeanor other than a speeding ticket, within the meaning of question 8a of respondent's application for a broker license.

3. In having falsely answered "no" to question 8a on her application for a broker's license, and in providing information to the board subsequent to her application by which respondent maintained that she was never convicted of a crime, respondent has made a material misstatement in an application for a license, or in any information furnished to the Real Estate Board or the Department of Regulation and Licensing, in violation of Wis. Stats. sec. 452.14(3)(a); and has been guilty of conduct which constitutes improper, fraudulent or dishonest dealing, in violation of Wis. Stats. sec. 452.14(3)(k).

4. The circumstances of respondent's conviction of the crime of forgery, and the circumstances of respondent's conviction of the crime of issuing a worthless check, substantially relate to the practice of a real estate broker within the meaning of Wis. Stats. sec. 111.335(1)(c)1.

5. In having been convicted of crimes the circumstances of which substantially relate to the circumstances of the practice of a real estate broker, respondent has violated Wis. Adm. Code sec. RL 24.17.

#### ORDER

NOW, THEREFORE IT IS ORDERED that the license of Glenna Darlene Zietz to practice as a broker in the State of Wisconsin be, and hereby is, suspended for a period of six (6) months, commencing 30 days from the date of this decision. On or before the effective date of this decision, respondent shall return all license certificates issued to her by the department. Respondent's license certificates shall be returned to her at the time of expiration of the period of suspension.

#### EXPLANATION OF VARIANCE

The Real Estate Board has made two modifications to the proposed decision filed by the hearing examiner.

The first is the addition of paragraph 9 to the Findings of Fact indicating that respondent falsely stated during the investigation by the department that she had never been convicted of a crime. This finding is supported by the record in this case and is necessary in order to support the related legal determination in paragraph 3 of the conclusions of law.

The board has also ordered that respondent's license be suspended for a period of six months, rather than the recommended ninety days. In doing so, it recognizes that the determination of appropriate discipline in any given case is to be based upon the specific conduct involved, as applied to the legitimate purposes for imposing sanctions upon a licensee, which are: 1) to promote the rehabilitation of the licensee, 2) to protect the public, and 3) to

deter other licensees from engaging in similar conduct. 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). A consideration of those factors in this case leads the board to the conclusion that the period of suspension must be increased in this instance.

Even if her past convictions were disregarded, respondent has recently engaged in two acts of misconduct which brings into serious question her current integrity and trustworthiness. The first was to falsify her application in 1987 concerning her past conviction record, and the second was to continue to deny her past convictions upon inquiry into the matter by a department investigator in 1989. Despite the letters within the record from community members rendering positive opinions regarding her professional character, the actions of respondent in this matter appear to speak to the contrary.

Here, the seriousness of initially filing a false application for licensure was significantly compounded by further misstatements upon formal inquiry. Strong action is necessary under such circumstances in order to impress upon respondent the board's deep concern with such repeated conduct, and hopefully assure her rehabilitation from similar actions in the future.

Furthermore, the board must take action sufficiently strong in order to deter other licensees, and prospective licensees, not only from filing false application materials, but from providing false information to the board and department during the course of investigations. It must be emphasized to licensees that the board will take very seriously, and sanction appropriately, situations in which licensees intentionally provide false information.

Upon consideration of all the circumstances presented in this case, it is the board's opinion that respondent's license should be suspended for six months.

Dated: February 22, 1990.

STATE OF WISCONSIN  
REAL ESTATE BOARD

Linda L. Schlawinsky

EXC14379

## NOTICE OF APPEAL INFORMATION

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

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

### 1. Rehearing.

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

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

### 2. Judicial Review.

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

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

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

The date of mailing of this decision is February 22, 1990.

WLD:dms  
886-490



STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

GLENA DARLENE ZIETZ,

Respondent

---

PROPOSED DECISION

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

Glena Darlene Zietz  
1018 East Chippewa Avenue,  
Bruce, WI 54819

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

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

A hearing was held in the above-captioned matter on November 9, 1989, at 1400 East Washington Avenue, Madison, Wisconsin. Richard Castelnuovo, attorney with the Department of Regulation & Licensing, Division of Enforcement, appeared for the complainant. Glena Darlene Zietz, respondent herein, appeared in person and without legal counsel.

Based upon the entire record in this case, the examiner 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. Glena Darlene Zietz (respondent), 1018 East Chippewa Avenue, Bruce, Wisconsin 54819 is licensed as a real estate broker in the State of Wisconsin by license #41782, granted on May 26, 1987.
2. On or about April 30, 1987, respondent completed and signed her "APPLICATION FOR NEW SALESPERSON OR BROKER LICENSE", attesting upon oath and affirmation that the answers set forth in the application were true and correct to the best of her knowledge and belief.



3. Respondent answered "no" to question 8a. on the application which asked "Have you ever been convicted of a felony or misdemeanor (excluding speeding tickets)?"

4. On or about November 17, 1977, in the Circuit Court for St. Croix County, Wisconsin, respondent was convicted on her plea of guilty on three counts of forgery in violation of Wis. Stats. sec. 943.38(1), committed on August 30, September 7, and September 9, 1977. She was further adjudged guilty as convicted, was initially placed on probation, and was subsequently committed to the Taycheedah Correctional Institution for an indeterminate term of not more than 15 months.

5. The circumstances of the forgery conviction involved three separate instances of forging the signature of the payor on checks made payable to respondent.

6. On or about February 5, 1981, in the Circuit Court for Barron County, Wisconsin, respondent was convicted on her plea of guilty of the crime of issuing a worthless check in violation of Wis. Stats. sec. 943.24, committed on or about June 9, 1978. She was further adjudged guilty as convicted, was initially placed on probation, and was subsequently sentenced to 30 days in the county jail to run concurrent with another sentence.

7. Respondent's conviction of crimes in violation of Wis. Stats. sections 943.38(1) and 943.24 constitutes a conviction of a felony or misdemeanor other than a speeding ticket, within the meaning of question 8a. of respondent's application for a broker license.

8. The circumstances of respondent's conviction for the crime of forgery and the circumstances of respondent's conviction for the crime of issuing a worthless check substantially relate to the circumstances of the practice of a real estate broker.

#### CONCLUSIONS OF LAW

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

2. Respondent's conviction of crimes in violation of Wis. Stats. sections 943.38(1) and 943.24 constitutes a conviction of a felony or misdemeanor other than a speeding ticket, within the meaning of question 8a. of respondent's application for a broker license.

3. In having falsely answered "no" to question 8a. of her application for a broker's license, and in providing information to the board subsequent to her application by which respondent maintained that she was never convicted of a crime, respondent has made a material misstatement in an application for a license, or in any information furnished to the Real Estate Board or the Department of Regulation & Licensing, in violation of Wis. Stats. sec. 452.14(3)(a); and has been guilty of conduct which constitutes improper, fraudulent or dishonest dealing, in violation of Wis. Stats. sec. 452.14(3)(k).

4. The circumstances of respondent's conviction of the crime of forgery, and the circumstances of respondent's conviction of the crime of issuing a worthless check, substantially relate to the practice of a real estate broker within the meaning of Wis. Stats. sec. 111.335(1)(c)1.

5. In having been convicted of crimes the circumstances of which substantially relate to the circumstances of the practice of a real estate broker, respondent has violated Wis. Adm. Code sec. RL 24.17.

#### ORDER

NOW, THEREFORE IT IS ORDERED that the license of Glena Darlene Zietz to practice as a broker in the State of Wisconsin be, and hereby is, suspended for a period of 90 days, commencing 30 days from the date of the Order of the Real Estate Board adopting the terms of this Proposed Decision. On or before the effective date of the board's final decision, respondent shall return all license certificates issued to her by the department. Respondent's license certificates shall be returned to her at the time of expiration of the period of suspension.

#### DISCUSSION

It is impossible to know whether respondent would have been granted a license had she revealed her criminal convictions at the time of her application. Because real estate brokers handle client funds on a regular basis, and are charged with exercising scrupulous care and honesty in so doing, there can be no question that the circumstances of respondent's convictions are substantially related to the circumstances of her licensed activity. Accordingly, there would have been adequate basis for denial of the license had the department been made aware of those convictions. On the other hand, the conviction for forgery occurred more than nine years prior to her application for licensure, and the worthless check violation was almost nine years old. In those circumstances, it is probable that respondent could have demonstrated her rehabilitation sufficiently to convince the department that licensure was appropriate. She did not follow that course, however, but rather compounded her difficulties by lying on her application.

One may sympathize with respondent's personal dilemma in trying to decide whether to disclose her previous legal problems at the time of her application, and may sympathize as well with her decision not to disclose the convictions out of fear for loss of her new career. Unfortunately, however, there's even more here. After the board received an anonymous complaint against respondent on September 27, 1987, Investigator John Kitslaar, by letter dated April 21, 1989, requested a written response to the allegations contained in the complaint that respondent had been convicted of a felony in Oklahoma. That written response, received by the department on July 6, 1989, indicated that there had never been any criminal action in Oklahoma. In an attempt to elicit a more detailed response from respondent, Mr. Kitslaar spoke to her by telephone on July 6, 1989. At that time, respondent told Kitslaar that she had never been convicted of any crime in any state and had never been in prison. Again, respondent's reluctance to admit to the previous convictions is understandable. Her failure to do so, however, is not only completely unacceptable, but raises questions as to her claim that she is rehabilitated.

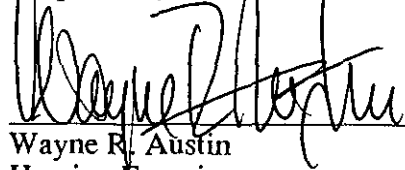
Which is not to say that there is not substantial evidence of rehabilitation in this record. First, there have been no known further violations of law by respondent in the last ten years and, in that period, respondent has furthered her education with a two year degree in sales and marketing. Second, she has been regularly and responsibly employed with one real estate firm for almost six years, starting as a secretary and presently serving as corporation broker and manager of Hutnik Real Estate. Finally, the record is replete with letters from local attorneys, brokers and corporate officers attesting to respondent's character and professionalism.

The established purposes for licensee discipline are to promote the rehabilitation of the licensee, to deter other licensees from engaging in similar conduct, and to protect the public. State v. Aldrich, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. State v. McIntyre, 41 Wis. 2d 481 (1969). On balance, and in considering all the evidence in this case, including respondent's demeanor at the hearing herein, the examiner concludes that while respondent's falsification of her application and her subsequent attempts to mislead the investigator constitute serious violations, her actions evince phenomenally poor judgment rather than any evil intent. If so, then the evidence of rehabilitation is quite compelling, and the rehabilitative objective of discipline need not be considered as a substantial factor in determining what discipline, if any, is appropriate.

Having decided that the evidence supports the conclusion that respondent's reformation is substantially complete does not, however, lead to the further conclusion that no discipline should be imposed. While the public may have nothing to fear from respondent's continuing practice as a broker, the deterrence objective demands that other licensees not be led to believe that they may with impunity fail to disclose necessary information relating to their applications and to the board's disciplinary process. It is the examiner's opinion that a three month suspension of respondent's license is sufficient to ensure that that does not happen.

Dated at Madison, Wisconsin this 4th day of January, 1990.

Respectfully submitted,



Wayne R. Austin  
Hearing Examiner

wra:12607