

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

STANLEY N. LUECK,
DONALD E. ENGUM, and
REALTY WORLD-FIRST SECURITY GROUP,
RESPONDENTS.

FINAL DECISION
AND ORDER
LS9112114REB

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

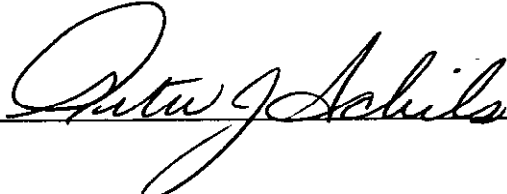
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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

Respondent or his or her representative shall mail any objections to the affidavit of costs filed pursuant to the foregoing paragraph within 30 days of this decision, and mail a copy thereof to the Division of Enforcement and Administrative Law Judge.

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

Dated this 27TH day of AUGUST, 1992.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	PROPOSED DECISION
	:	Case No. LS-9112114-REB
STANLEY N. LUECK,	:	(DOE case number 89 REB 368)
DONALD E. ENGUM, and	:	
REALTY WORLD - FIRST SECURITY GROUP,	:	
RESPONDENTS.	:	

PARTIES

The parties in this matter under sec. 227.44, Wis. Stats. and sec. RL 2.036, Wis. Adm. Code, and for purposes of review under sec. 227.53, Wis. Stats. are:

Stanley N. Lueck
3402 McElroy Street
Eau Claire, WI 54701

Donald E. Engum
RR 4, Box 200-A
Mondovi, WI 54755

Realty World - First Security Group
2129 Brackett Avenue
Eau Claire, WI 54701

Real Estate Board
1400 East Washington Ave.
Madison, WI 53708

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

PROCEDURAL HISTORY

A. This case was initiated by the filing of a complaint with the Real Estate Board on December 11, 1991. A disciplinary proceeding (hearing) was scheduled for March 9, 1992. Notice of Hearing was prepared by the Division of Enforcement of the Department of Regulation and Licensing and sent by certified mail on December 11, 1991 to all three respondents. The notice sent to Realty World - First Security Group was received on December 12, 1991 by Gary Parker. The notice sent to Stanley N. Lueck was delivered on December 16, 1991; the Certified Mail Receipt was signed by Stanley N. Lueck. The notice sent to Donald N. (sic) Engum was returned undelivered.

B. An Answer was filed on behalf of Donald E. Engum and Realty World - First Security Group on December 30, 1991.

C. On March 2, 1992 Attorney Roger Hall of the Department of Regulation and Licensing's Division of Enforcement informed the undersigned Administrative Law Judge that an agreement had been reached with two of the respondents, Donald E. Engum and Realty World - First Security Group, which would resolve the case with regard to them if accepted by the Board. To give the Board time to review and act on the proposed settlement, the hearing was rescheduled to April 27, 1992. A scheduling notice was mailed by certified mail to Stanley N. Lueck on March 2, 1992, and it was delivered on March 6, 1992; the Certified Mail Receipt was signed by Carolyn M. Lueck.

D. All time limits and notice and service requirements having been met, the disciplinary proceeding was held as scheduled on April 27, 1992. There was no appearance by any of the respondents. The Real Estate Board was represented by Attorney Roger Hall, who stated that charges against Donald E. Engum and Realty World - First Security Group were dismissed by the Board on March 26, 1992. Exhibits were filed, but the hearing was adjourned until June 24, 1992 to allow Mr. Hall to file and serve an amended complaint. Paragraph 24d of the complaint, relating only to Donald E. Engum and Realty World - First Security Group, was effectively dismissed, and was not reissued in the amended complaint.

E. A Notice of Continuance of Hearing and Amended Complaint were filed on May 6, 1992 and mailed by certified mail on the same date to Stanley N. Lueck at both 3402 McElroy Street, Eau Claire, WI 54701 and the Black River Falls Correctional Institution, Route 5, Box 433C, Black River Falls, WI 54615. Mr. Lueck received the Notice and Amended Complaint on May 7, 1992.

F. No Answer to the Amended Complaint was filed, but on May 29, 1992 Carolyn M. Lueck sent a letter to the Real Estate Board expressing Stanley N. Lueck's desire to voluntarily surrender his license. Included with the letter were Mr. Lueck's real estate broker's license and identification card, and a photocopy of a document entitled "Durable Power of Attorney" appointing Carolyn M. Lueck as Stanley N. Lueck's attorney for various purposes.

G. The adjourned hearing was reconvened on June 24, 1992. Mr. Lueck did not appear at the hearing; Mr. Hall appeared for the Real Estate Board.

H. The amended complaint along with the testimony and exhibits entered into evidence at both the April 27, 1992 hearing and the June 24, 1992 hearing form the basis for this Proposed Decision.

FINDINGS OF FACT

1. Respondent Stanley N. Lueck is and was at all times relevant to the facts set forth herein a real estate broker licensed in the state of Wisconsin, under license number 24643, originally granted on November 24, 1980.

2. At all times relevant to the facts set forth herein Mr. Lueck was an officer of Realty World - First Security Group, 2129 Brackett Avenue, Eau Claire, Wisconsin ("Realty World").

3. Mr. Lueck drafted a listing contract dated August 22, 1989, in which Randall and Brenda Lynch granted Realty World the right to sell their residential property at 3317 Gerrard Avenue, Eau Claire, Wisconsin to one party, Alec and Vicki Christianson for \$61,900 during the period from August 22 to 25, 1989, with a commission rate of 6%.
4. Line 13 of the listing contract was not completed to reflect whether the property was in a flood plain.
5. Mr. Lueck drafted a residential offer to purchase ("offer") dated August 22, 1989 on behalf of the Christiansons, which provided in pertinent part:
 - a. a purchase price of \$61,900;
 - b. earnest money in the amount of \$500 tendered with the offer;
 - c. a financing contingency;
 - d. a closing date on or before September 29, 1989; and
 - e. no indication of whether the property was in a flood plain.
6. The Christianson's purchase of the Lynches' property was contingent on the sale or lease of their mobile home, but Mr. Lueck failed to include this as a contingency in the offer.
7. Mr. Lueck signed an earnest money receipt acknowledging the Christiansons' \$500 earnest money payment.
8. On or about August 22, 1989 the Lynches accepted the Christiansons' offer.
9. By correspondence dated September 11, 1989 loan solicitor Donald Engum notified the Christiansons that evidence of sale or lease of their mobile home was needed for loan approval.
10. An appraisal dated September 14, 1989 showed the market value of the Lynches' property as \$56,900.
11. Mr. Lueck drafted an amendment to the listing contract dated September 21, 1989 reducing the listing price to \$56,500, extending the listing contract to September 30, 1989, and reducing the commission rate to 3.5%.
12. Mr. Lueck drafted a second offer dated September 21, 1989 on behalf of the Christiansons, which provided in pertinent part:
 - a. a purchase price of \$56,500;
 - b. a change in financing terms and conditions;
 - c. extension of the closing date to October 6, 1989; and
 - d. no mention of the contingency for sale or lease of the Christianson's mobile home.
13. No release and cancellation of the first offer was obtained.
14. An unsigned amendment to the second offer dated October, 1989 added the sale or lease of the Christiansons' mobile home as a contingency.
15. The transaction failed to close, and on or about November 17, 1989 Realty World returned the \$500 earnest money payment to the Christiansons.

16. On February 6, 1992, Mr. Lueck was convicted in Eau Claire County of two counts of violating sec. 943.20(1)(b), Wis. Stats., "theft by bailee/employee (embezzlement)".

CONCLUSIONS OF LAW

I. The Real Estate Board has personal jurisdiction over the Respondent, based on fact #1 above and paragraph A above under "Posture of Case".

II. The Real Estate Board has jurisdiction over the subject-matter of this complaint, under sec. 15.08(5)(c), Wis. Stats, sec. 452.14, Wis. Stats, and ch. RL 24, Wis. Admin. Code.

III. The respondent, Stanley N. Lueck, is in default under sec. RL 2.14, Wis. Admin. Code for failing to file answers as well as to appear at the scheduled hearings. The averments in the complaint and the amended complaint are therefore deemed admitted under sec. RL 2.09(3).

IV. Respondent violated sec. 24.08, Wis. Admin. Code in the Lynch-Christianson transaction by failing to express the terms and conditions of the agreement of the parties in writing, thereby demonstrating incompetence to act as a real estate broker under sec. 452.14(3)(i), Wis. Stats.

V. Respondent violated sec. RL 16.04(1), Wis. Admin. Code by failing to use an approved form, thereby demonstrating incompetence to act as a real estate broker under sec. 452.14(3)(i), Wis. Stats.

VI. Respondent violated sec. RL 18.09, Wis. Admin. Code by improperly disbursing trust funds, thereby demonstrating incompetence to act as a real estate broker under sec. 452.14(3)(i), Wis. Stats.

VII. The circumstances of Respondent's felony conviction for theft by bailee/employee are substantially related to the practice of a real estate broker, and Respondent violated sec. RL 24.17(1), Wis. Admin. Code, thereby demonstrating incompetence to act as a real estate broker under sec. 452.14(3)(i), Wis. Stats.

ORDER

THEREFORE, IT IS ORDERED that the license of Stanley N. Lueck to practice as a real estate broker in the state of Wisconsin be revoked, effective on the date this order is signed on behalf of the Real Estate Board;

IT IS FURTHER ORDERED that Mr. Lueck pay the costs of this proceeding, as authorized by sec. 440.22(2), Wis. Stats. and sec. RL 2.18, Wis. Admin. Code.

OPINION

Upon Respondent's failure to file an answer or appear at the hearing, the allegations of the amended complaint are deemed admitted.

The Offenses Alleged in the Amended Complaint.

The facts regarding the Lynch-Christianson transaction sufficiently show that Mr. Lueck violated sec. 24.08, Wis. Admin. Code in failing to express the terms and conditions of the agreement of the parties in writing, and also that he violated sec. RL 16.04(1), Wis. Admin. Code (not RL 15.02 as charged) in failing to use an approved form.

The third violation alleged in the Lynch-Christianson transaction is that Mr. Lueck improperly disbursed trust funds. This allegation is supported in the record only by the fact that the earnest money deposit of \$500 was returned to the Lynches rather than forwarded to the Christiansons when the transaction fell through. To find that this act was a violation of sec. RL 18.09, Wis. Admin. Code involves speculation as to which party really was the proper recipient of the earnest money, when neither appears to have been at fault. However, by his failure to file an answer Mr. Lueck is deemed to have admitted the allegation, and on that basis alone I find a violation of sec. RL 18.09.

The offense of theft by bailee/employee¹ of which Mr. Lueck was convicted involved the mishandling of funds entrusted to him and, given the importance of the fiduciary aspect of a real estate brokerage, such an offense must be found to be substantially related to the practice of a real estate broker. Since the issue was not disputed by Mr. Lueck, no further discussion is necessary. By committing and being convicted of this offense, Mr. Lueck violated sec. RL 24.17(1), Wis. Admin. Code.

The Attempted Voluntary Surrender.

One additional issue must be addressed, and that is Mr. Lueck's attempt to surrender his license voluntarily, which fails only because of language in his Durable Power of Attorney. Attorney Hall noted that another possible basis

¹**943.20 Theft (1) ACTS.** Whoever does any of the following may be penalized as provided in sub.(3):

...

(b) By virtue of his office, business or employment, or as trustee or bailee, having possession or custody of money or of a negotiable security, instrument, paper or other negotiable writing of another, intentionally uses, transfers, conceals, or retains possession of such money, security, instrument, paper or writing without the owner's consent, contrary to his authority, and with intent to convert to his own use or to the use of any other person except the owner. ...

...

(3) PENALTIES. Whoever violates sub. (1): ...

(c) If the value of the property exceeds \$2,500, is guilty of a Class C felony. ...

for rejecting the voluntary surrender is that the Board cannot be sure Carolyn Lueck's letter and submission of documents were authorized by her husband, but this ruling need not be based on any uncertainty over Mr. Lueck's desires.

On May 29, 1992, the Board received four documents: (1) the form issued by the Department of Regulation and Licensing which is numbered 24643 and which documents Stanley N. Lueck's authority to act as a real estate broker (the "license"), (2) the pocket identification card issued to Mr. Lueck, (3) a photocopy of a document entitled "Durable Power of Attorney", and (4) a letter signed "Stanley N. Lueck by Carolyn M. Lueck, P.O.A." stating among other things "I am surrendering my license number 24643 (enclosed herewith)".

If Mr. Lueck had himself surrendered his license, or if the powers granted to Carolyn M. Lueck in the Durable Power of Attorney extended to cover the attempted voluntary surrender, Mr. Lueck's action would have been effective and would have deprived the Board of personal jurisdiction over him, since the basis for personal jurisdiction in a case of professional discipline lies in the license issued by the Board or other granting authority.² However, in this case, the power of attorney granted by Mr. Lueck to his wife does not authorize her to surrender his license. The Durable Power of Attorney included with the license, the identification card and Mrs. Lueck's letter states in relevant part:

²Issues related to the voluntary surrender of a license have not been dealt with in statutes or reported cases in Wisconsin. The Medical Examining Board alone has anticipated the potential problem of a licensee avoiding professional discipline by voluntary surrender. Its authorizing statute, sec. 448.02(5), Wis. Stats., states "the holder of any license, certificate or limited permit granted by the board may voluntarily surrender the license, certificate or limited permit to the secretary of the board, but the secretary may refuse to accept the surrender if the board has received allegations of unprofessional conduct against the holder of the license, certificate or limited permit." No similar provision exists in chapter 452 ("Real Estate Practice") or chapter 440 ("Department of Regulation and Licensing").

In the absence of a more specific rule of law, the issue must be decided in terms of the general Anglo-American legal tradition, usually called the "common law", and the common law appears to be that a license simply terminates upon voluntary surrender. As stated in one of the two major legal encyclopedias, Corpus Juris Secundum, "a license terminates by lapse of time on the date which is fixed by statute or ordinance, and the licensee may exercise the rights and privileges granted by the license only for the term specified. A license or permit may also be voluntarily abandoned or surrendered, and it may be terminated by the licensee abandoning the business for which he was licensed, in which case he may be compelled to procure a new license if he again engages in such business. A license to pursue a given occupation or business is terminated by the holder's death." 53 C.J.S. Licenses sec. 48. The Real Estate Board or the Department would have the authority to promulgate a rule departing from the common law regarding voluntary surrenders, as the Medical Examining Board has done, but such a departure cannot simply be assumed. Therefore, if there were no defect in the voluntary surrender, Mr. Lueck's action would be effective, and the complaint would have to be dismissed for lack of personal jurisdiction.

That I, Stanley N. Lueck ... appoint Carolyn M. Lueck ... my ... attorney ... to conduct all of my financial affairs, to deposit any checks or funds due me, including but not limited to social security, pension, interest, dividends, refunds, reimbursements or other funds;

The right to endorse my name on all such checks and other sums due me in order to deposit same;

The right to draw checks or drafts on my checking account to pay any and all expenses I may incur or for my benefit and generally to pay for my care and maintenance or the care and maintenance of my property;

The right to transfer funds from my savings account or other deposit account to my checking account;

If necessary, the right to make arrangements for medical care for me, including admitting me to a hospital or a nursing home for medical care at my expense, if needed;

My attorney-in-fact has the authority to manage any and all of my bank accounts, stocks and/or bonds. ...

In the event of my disability and should this happen, this Power of Attorney including the grant of authority to any successor shall not be affected by subsequent disability or my incapacity.

My attorney-in-fact shall have the full power to manage, administer, rent, sell or convey all of my property, real or personal, tangible or intangible, whether specified or not, whether acquired by me before or after the execution hereof, and to execute all documents, of whatever kind, necessary or reasonable for these purposes.

....

Although his intent may have been to give his wife complete authority to sign any papers for him, I find that the above language covers only Mr. Lueck's financial affairs and "property", as well as arrangements for his medical treatment if necessary. A license is not property³, and the above language does not grant Carolyn M. Lueck the authority to surrender Stanley Lueck's license as a real estate broker to the Board. For that reason, the attempted voluntary surrender is ineffective, and the Department retains jurisdiction to impose discipline on Mr. Lueck in this proceeding.

³American States Water Service Co. of California v. Johnson, 31 Cal. App. 2d 606, 88 P. 2d 770, 774; Asbury Hospital v. Cass County, 72 N.D. 359, 7 N.W. 2d 438, 452.

Discipline.

The purposes of professional discipline are (1) to protect the public, by assuring the moral fitness and professional competency of those privileged to hold licenses, (2) to deter others in the profession from similar unprofessional conduct, and (3) to rehabilitate the offender.

Discipline for the incompetence and unprofessional conduct demonstrated by Mr. Lueck in the Lynch-Christianson transaction could be related to the second and third purposes above, and such discipline might well be less than revocation. However, given the magnitude of the offense for which Mr. Lueck was convicted in Eau Claire County, the first purpose of professional discipline, protection of the public, is overriding, and the only appropriate discipline is revocation. Any discipline for the other offenses is subsumed in the recommended order for revocation.

An order that Mr. Lueck pay for the costs associated with this proceeding is also appropriate. First, his unprofessional and criminal actions occasioned this hearing. Second, since he offered belatedly to surrender his license, he might have avoided the costs of prosecution and a hearing if he had been more cooperative with the Board at an earlier date. It is relevant here to note that he failed to notify the department within 30 days of his conviction, thus requiring the department to initiate and prosecute this case. An order for costs should not be punitive, however, and it is entirely possible that in his present circumstances, an order for costs would impose a hardship on Mr. Lueck. If that is so, the Respondent has an opportunity under sec. RL 2.18, Wis. Admin. Code to object to the imposition of costs as well as to the recommended discipline.

Dated July 8, 1992.



John N. Schweitzer
Administrative Law Judge
Department of Regulation and Licensing

BDLS2-1958

NOTICE OF APPEAL INFORMATION

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

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

1. Rehearing.

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

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

2. Judicial Review.

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

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

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

The date of mailing of this decision is September 1, 1992.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	AFFIDAVIT OF COSTS OF
	:	OFFICE OF BOARD LEGAL SERVICES
STANLEY N. LUECK,	:	Case No. LS-9112114-REB
RESPONDENT.	:	

John N. Schweitzer affirms the following before a notary public for use in this action, subject to the penalties for perjury in sec. 946.31, Wis. Stats.:

1. He is an attorney licensed to practice law in the State of Wisconsin, and is employed by the Wisconsin Department of Regulation and Licensing, Office of Board Legal Services.
2. In the course of his employment, he was assigned as the administrative law judge in the above-captioned matter.
3. Set out below are the actual recorded costs of the proceeding for the Office of Board Legal Services in this matter:


a. Administrative Law Judge Expense - John N. Schweitzer	
Conduct hearing 6-24-92	1/2 hour
Research 7-2-92	2 hours
Prepare decision 7-1-92, 7-7-92, and 7-8-92	4 hours
	<hr/>
	6 1/2 hours

Total administrative law judge expense:	
6 1/2 hours @ \$23.80/hour	= \$154.70

b. Reporter Expense - Magne-Script, 112 Lathrop Street, Madison, WI	
Record 4-27 and 6-24 hearings	\$ 45.00
Transcribe hearings (25 pages)	\$ 82.50

Total reporter expense	= \$127.50
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Total assessable costs for Office of Board Legal Services	= \$282.20
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John N. Schweitzer
Administrative Law Judge

Sworn to and signed before me this 15th day of September, 1992.

James E. Bleasby, Notary Public, State of Wisconsin.

My commission is permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
STANLEY N. LUECK, :
RESPONDENT. :
 :
AFFIDAVIT IN SUPPORT
OF MOTION FOR COSTS
89 REB 368

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Roger R. Hall, being duly sworn, deposes and states as follows:

1. That he is an attorney licensed in the state of Wisconsin and is employed by the Wisconsin Department of Regulation and Licensing, Division of Enforcement:

2. That in the course of those duties he was assigned as a prosecutor in the above-captioned matter; and

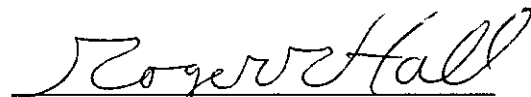
3. That set out below are the costs of the proceeding accrued to the Division of Enforcement in this matter, based upon Division of Enforcement records compiled in the regular course of agency business in the above-captioned matter.

PROSECUTING ATTORNEY EXPENSE

Total attorney expense for Roger R. Hall
10 hours and 4 minutes at \$30.00 per hour
(based upon average salary and benefits
for Division of Enforcement attorneys) equals: \$ 312.00

Total investigator expense for Joan Gammeter
7 hours and 9 minutes at \$18.00 per hour
(based upon average salary and benefits
for Division of Enforcement investigators) equals: \$ 144.00

TOTAL ASSESSABLE COSTS \$ 456.00



Roger R. Hall

Subscribed and sworn to before me this 16 day of July 1992.



Notary Public
My Commission is permanent.

RRH:daw
ATY-2141