

# 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](mailto:web@drl.state.wi.gov)

# FILE COPY

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION
	:	AND ORDER
RALPH L. POPPE,	:	LS9204063REB
RESPONDENT.	:	

---

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

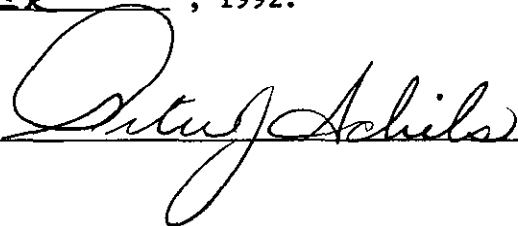
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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 department for rehearing and the petition for judicial review are set forth on the attached "Notice of Appeal Information."

Dated this 29TH day of OCTOBER, 1992.

  
\_\_\_\_\_

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF  
DISCIPLINARY PROCEEDINGS AGAINST

PROPOSED DECISION  
LS 9204063 REB

RALPH L. POPPE,

RESPONDENT.

---

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

Ralph L. Poppe  
Box 47, Hwy. F  
Benoit WI 54816

Wisconsin Real Estate Board  
Department of Regulation and Licensing  
P.O. Box 8935  
Madison WI 53708

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

A hearing was held in this matter on July 16, 1992. Charles Howden appeared for the Division of Enforcement, and Ralph L. Poppe, Respondent, appeared in person.

On the basis of the entire record and proceedings in this matter, the Wisconsin Real Estate Board makes the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. Respondent Ralph L. Poppe holds license number 21300 and is licensed to practice as a real estate broker in the state of Wisconsin, and has an address of Box 47, Highway F, Benoit, Wisconsin 54816.

2. By residential listing contract dated May 16, 1990, Stanley R. Nelson and Alberta A. Nelson granted Poppe and his brokerage firm Heritage Real Estate an exclusive right to sell their property located at Route 1, Box 94, Washburn, Wisconsin with a listing price of \$47,500.00.

3. On or about July 27, 1990, Poppe drafted, on behalf of Mildred Netz, age 74, an offer to purchase on Form WB-11 for the purchase of the Nelson property for the sum of \$45,000.00. Poppe did not indicate on the form whether he represented the buyer or the seller.

4. At the time that Poppe drafted the Netz offer, he was the agent for Netz in the sale of her home at 2120 Second Avenue East in Ashland, Wisconsin, and he specifically made the purchase of the Nelson property by Netz contingent upon Netz selling her home in Ashland.

5. On or about July 28, 1990, Poppe drafted a counter-offer signed by Stanley and Alberta Nelson wherein the Nelsons offered to sell to Netz for the amount of \$46,000.00, with no other changes to the July 27 offer by Netz.

6. On or about July 30, 1990, Netz accepted the Nelson counter-offer.

7. On or about September 11, 1990, the closing of the sale from Nelson to Netz took place with Netz paying over to Nelson the sum of \$46,000.00 as the full purchase price.

8. On or about September 11, 1990, Netz took occupancy of the property she had purchased from Nelson, and discovered, when she tried to use the toilet, that it would not flush and that the sewage facilities at the property were not working properly.

9. Netz hired Bay Area Septic Service, Melvin D. Nelson to determine the cause of the septic system backing up. Mr. Nelson excavated, and determined that the septic tank had rusted away, and that an old wagon wheel had been placed over a hole in the top of the tank, with a piece of metal on top of the wagon wheel to keep dirt from falling in the tank. The weight of the dirt, combined with the weakened condition of the tank, had caused the tank to cave in further, blocking the exit hole of the tank.

10. Mr. Nelson's further investigation of the septic system disclosed that there was no drain field for the septic system, and that all sewage leaving the septic tank travelled directly to an outlet located on an embankment on the Lake Superior shore of the property.

11. In October 1990, Netz discovered that the water heater on the property was corroded and leaking.

12. Netz was required to install a holding tank on the property, which would not support a septic system, at a cost in excess of \$3,000.00, and is required to have the holding tank pumped regularly at additional expense.

13. Netz was required to replace the leaking water heater in October 1990.

14. Poppe, as drafter of the Netz offer to purchase the Nelson property, made no suggestion to Netz for a contingency for inspection of the property, including the the water system and sewage system.

15. Poppe was the listing broker for the Nelson property which Netz purchased, and failed to make an appropriate inspection of the property to determine material facts about the property.

16. The Nelsons had informed Poppe that the septic system did not have a drain field at the time of the listing contract, and had shown him the general area of the outlet of the pipe carrying the raw sewage to Lake Superior shoreline.

17. The lack of a working septic system on the property was a material adverse fact concerning the condition of the property.

18. Poppe did not disclose the lack of a working septic system on the property to Netz, and did not disclose the fact that all sewage from the property was deposited on the property's Lake Superior shoreline.

#### CONCLUSIONS OF LAW

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

2. By failing to identify the party Poppe represented in the Nelson-Netz transaction to Netz, the purchaser, Poppe violated s. 452.14(3)(i), Wis. Stats., and s. RL 24.07(4)(c), Wis. Admin. Code.

3. By failing to perform a reasonably competent and diligent visual inspection of the property to discover material adverse fact relating to the water and sewer systems of the property, Poppe violated s. 452.14(3)(i) and ss. RL 24.07(1) and 24.07(1)(a)(1), Wis. Admin. Code.

4. By his incompetency in failing to advise Netz to obtain an inspection of the water and sewage systems serving the property and his failure to include contingencies relating to the successful completion of those inspections, Poppe violated s. 452.14(3)(i), Wis. Stats., and ss. RL 24.025, 24.03(2)(b) and 24.03(2)(c), Wis. Admin. Code.

5. By failing to disclose known material adverse facts regarding the condition of the property to the purchaser, Poppe misrepresented the condition of the property and violated s. 452.14(3)(b), Wis. Stats., and ss. RL 24.025 and 24.07(1), Wis. Admin. Code.

6. By failing to disclose known material adverse facts regarding the lack of a septic system on the property, Poppe violated s. 452.14(3)(i), Wis. Stats., and s. RL 24.07(1), Wis. Admin. Code.

#### ORDER

Now, therefore, IT IS ORDERED that the real estate broker's license previously issued to Ralph L. Poppe be and hereby is REVOKED, effective 30 calendar days from the date of this Order.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed upon Ralph L. Poppe, pursuant to s. 440.22, Wis. Stats.

#### OPINION

The testimony in this case establishes by a clear preponderance of the evidence that Mr. Poppe knew that the Nelson property did not have a working septic system at the time he drafted the Netz offer to purchase, and it establishes beyond any reasonable doubt that Mr. Poppe's guiding principle in the practice of real estate is "Let the buyer beware."

Mr. Poppe testified repeatedly that he did not know such mundane facts as the necessity of a drain field for a septic system, or such facts of local importance as the impossibility of getting a passing percolation test on Lake Superior shoreline property in the area, or such facts of vital interest to the real estate market as the details of shoreland protections affecting the development and use of lakeshore property. If one were to accept Mr. Poppe's testimony as true, one would have to conclude that he is willfully ignorant. It is otherwise impossible to explain how a person living in a rural area could avoid understanding the fundamentals of a septic system, or how a person who trades in real estate could avoid knowing which rural areas in the market he serves will support a septic system, or how a real estate professional in a market which has Lake Superior as a major geographic feature could avoid knowing the general outlines of the restrictions on lakeshore development.

Mr. Poppe represented himself in these proceedings, and did so in a way which demonstrated at least average intelligence and the ability to integrate disparate information to support a reasonable conclusion. I conclude that his protestations of ignorance are a sham, and that his statements to the effect that it is up to the buyer to know the condition of the property under consideration are the true measure of his operating principles. "Caveat emptor" is precisely the principle which s. RL 24.07, Wis. Admin. Code is intended to forbid to real estate licensees in Wisconsin. Mr. Poppe's conduct in this case shows that he is unwilling to accept the principle that even though he is the agent of the seller, he owes a duty of honesty and fairness to the purchaser.

The failure to insert common contingencies for passing inspections of the water and private sewer systems of property dependent upon them is incompetence in the practice of real estate. Not only does it leave the purchaser to fate, it also exposes the seller to unnecessary peril if a readily determinable defect shows up where the seller warrants there is no problem. In this case, the sellers knew there was no septic system, and told Mr. Poppe they knew. His failure to disclose that knowledge of a manifestly adverse material fact about the property did the seller, his principals, a grave disservice, exposing them to potentially devastating financial loss. The failure clearly did cost the purchaser, catching her completely by surprise. Mr. Poppe's statements at the hearing to the effect that Mrs. Netz knew about septic systems because she had had one, and therefore he did not need to recommend any inspection or provide any contingencies in the contract, merely demonstrate the buyer beware principle by which he operates.

Wisconsin does not accept that the real estate professional's agency relationship with the seller absolves the agent of any responsibility to the fair treatment of the buyer. It does require that the agent identify clearly who the agent is working for; in this case, Mr. Poppe failed to do even that much for the protection of Mrs. Netz. Having gained her trust in one transaction, he abused it in circumstances where it could be reasonably argued that Mrs. Netz thought he was her agent, and Mr. Poppe did not advise her otherwise.

Because the buyer has enough to be wary of in any real estate transaction without having to beware of the real estate licensee, it is necessary to revoke Mr. Poppe's license. His conduct here was not the result of ignorance, but rather a choice to make the sale at terms advantageous to his principal even if it meant ignoring the command of fair dealing. This is a form of dishonesty, and it is not possible to determine in advance what will remedy the dishonest impulse which leads to sharp dealing and the falsehood by misdirection and omission. Public protection requires that when the Board learns of a licensee whose principles permit such practice the Board remove the public threat to emphasize that licensees are required to deal fairly with all concerned and that "buyer beware" is not an appropriate real estate practice principle.

Dated this 11th day of September, 1992.

  
James E. Polewski, ALJ



## 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 October 30, 1992.

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY  
PROCEEDINGS AGAINST

RALPH L. POPPE  
RESPONDENT.

:  
:  
: AFFIDAVIT OF COSTS  
: OFFICE OF BOARD LEGAL SERVICES  
: LS 9204063 REB  
:

STATE OF WISCONSIN  
COUNTY OF DANE, ss:

James E. Polewski, being first duly sworn on oath, deposes and says:

1. He is an attorney licensed to practice law in the state of Wisconsin, and employed by the Office of Board Legal Services, Department of Regulation and Licensing.

2. In the course of that employment, he was assigned as Administrative Law Judge in the above-captioned matter, and expended the following time and committed the Department to the following expenses:

<u>DATE</u>	<u>ACTIVITY</u>	<u>TIME</u>
4/6/92	Read complaint	5 minutes
4/16/92	Read Answer	15 minutes
4/24/92	Draft Prehearing notice	15 minutes
5/4/92	Preside at prehearing conference	20 minutes
5/8/92	Draft prehearing memo, order and letter	30 minutes
6/10/92	Draft scheduling order	20 minutes
7/15/92	Travel, Madison-Ashland	7 hours
7/16/92	Preside at hearing	8 hr 15 minutes
7/17/92	Travel, Ashland-Madison	7 hours
9/9/92	Draft decision	2 hours
9/11/92	Draft decision	<u>2 hours</u>
TOTAL TIME		28 hours
Administrative Law Judge time charges (\$24.75/hour)		\$ 693.00
Mileage (604 miles @ \$0.183)		\$ 110.53
Lodging (2 nights @ \$49.00)		\$ 98.00
Meals		\$ 42.00
Transcript (BeBeau Reporting, Ashland)		<u>\$ 652.05</u>
TOTAL		<u>\$1595.58</u>



*James E. Polewski*  
James E. Polewski

Sworn to and subscribed before me this 30th day of October, 1992.

*Patsy M. Strasburg*  
Notary Public  
My Commission is Permanent. 11/6/94

STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

---

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT IN SUPPORT
	:	OF MOTION FOR COSTS
RALPH L. POPPE,	:	91 REB 138
RESPONDENT.	:	

---

STATE OF WISCONSIN )  
                          ) ss.  
COUNTY OF DANE     )

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

1. That Charles J. Howden 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 Charles J. Howden was assigned as a prosecutor in the above-captioned matter; and

3. That set forth below are 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 business:

PROSECUTING ATTORNEY EXPENSE

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
05/03/91	Receipt and review of complaint	.5 hrs
09/03/91	Review of investigative file and correspondence Attorney Stauske	1.5 hrs
09/09/91	Phone conference Louie Netz	.25 hrs
01/09/92	Phone conference Board Advisor and memo and review of file	.75 hrs
01/06/92	Draft of Stipulation with proposed Final Decision and Order and correspondence	2.5 hrs
03/31/92	Correspondence to complaint and respondent and drafting of complaint and notice of hearing	3 hrs
04/20/92	Receipt and review of Respondent's answer to complaint.	.8 hrs
05/04/92	Pre-hearing conference and memo	1 hr
05/07/92	Correspondence to witnesses and arranging in preparations for depositions in Ashland	7 hrs
05/26/92	Preparation of preliminary list of witnesses and correspondence.	.8 hrs

05/20/92	Travel to Ashland	7 hrs
05/20/92	Preparation for depositions including interview of witnesses	3 hrs
05/21/92	Depositions	8 hrs
05/22/92	Travel from Ashland to Madison	7 hrs
06/08/92	Correspondence to Respondents including copies of file, correspondence to ALJ and preparation of amended complaint	6 hrs
06/08/92	Arrange for service of amended complaint	.5 hrs
06/10/92	Receipt and review of scheduling order and arranging for time and location of hearing	1.25 hrs
06/15/92	Correspondence and drafting of subpoenas to witnesses and arranging for service on witnesses	2.5 hrs
06/22/92	Preparation	2 hrs
06/23/92	Preparation	3 hrs
7/02/92	Correspondence Louie and Mildred Netz regarding testimony	.3 hrs
07/09/92	Preparation of exhibits and witness questions	7 hrs
07/13/92	Preparation	5.5 hrs
07/15/92	Travel to Ashland	7 hrs
7/16/92	Hearing in Ashland, Wisconsin	8 hrs
07/17/92	Travel to Madison	7 hrs
7/30/92	Correspondence with witnesses	.5 hrs
10/09/92	Receipt and review of objections to proposed decision, review transcript	4.25 hrs
10/13-14/92	Drafting of response to objections	5.0 hrs
10/27/92	Receipt and review of correspondence from respondent	.3 hrs
11/4/92	Prepare affidavit of Costs	1 hr.
	TOTAL ATTORNEY EXPENSE \$30.00 x 104.2 hrs.	\$3,126.00

INVESTIGATOR EXPENSE FOR John T. Johnson

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
5/29/91	Review file and letter	.5
6/13/91	Review response and draft summary	1.0 hr.
6/14/91	Letter, copy	.5 hr.
7/23/91	phone cll, revise summary	.5 hr.
8/22/91	Board meeting, pic summary	1.0 hr.
8/29/91	submit for pic	.25 hr.
9/3/91	letters	.75 hr.
9/11/91	Review letters, write letter	.5 hr.
9/17/91	Review letter	.2 hr.
9/20/92	Review letter	.2 hr.
10/2/91	Phone call, memo	.2 hr.
10/7/91	Review letter	.5 hr.
10/16/91	letter	.2 hr.
10/31/91 to 11/1/91	travel to Ashland, Interviews, Return	16.00 hrs.
11/7/91	memos	1.0 hrs.
11/13/91	memo	.2 hr.
11/19/91	Pic summary	2.0 hrs.
	TOTAL INVESTIGATOR EXPENSE \$18.00 x 25.5 hrs.	\$459.00

COSTS OF DEPOSITIONS

Bebeau Reporting, 522 1/2 9th Ave., W., Ashland, Wisconsin 54806, May 21, 1992 depositions. \$ 358.00

WITNESS FEES

1. Service of subpoenas on Stanley R. and Alberta A. Nelson for May 21, 1992 depositions. \$ 18.50
  2. Service fees for subpoena on Alberta and Stanley R. Nelson for July 16, 1992 hearing. \$ 12.50
  3. Service on Melvin D. Nelson for July 16, 1992 hearing. \$ 12.50
  4. Service on Ron Davis for July 16, 1992 hearing. \$ 12.00
- TOTAL WITNESS SERVICE FEES \$55.55

MISCELLANEOUS DISBURSEMENTS

1. Bayfield County Zoning Department, copying \$ 4.00
  2. Travel of attorney to Ashland, 2 round trips \$ 387.85  
Travel of Investigator (prorated with other investigations) 89.72
  3. Four nights lodging times \$49.00 \$ 196.00  
One night at \$30.49 30.49
  4. Copy charges while in Ashland \$ 12.15
  5. Meals six days/attorney \$ 105.00  
Meals investigator 32.00
- TOTAL MISCELLANEOUS COSTS \$857.21

TOTAL ASSESSABLE COSTS

\$4,855.76

  
Charles J. Howden, Attorney

Subscribed and sworn to before me this 4 day of November, 1992.



Notary Public  
My Commission is Permanent

ATY2-2905