

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

JANET M. CROWE,
RESPONDENT.

:
:
:
:
:

FINAL DECISION
AND ORDER
LS9209044REB

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

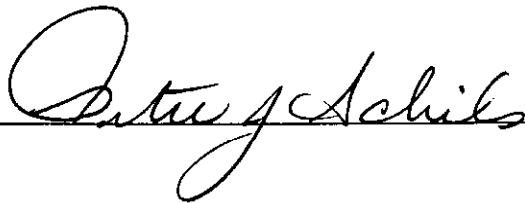
NOW, THEREFORE, it is hereby ordered that the Proposed Decision annexed hereto, filed by the Administrative Law Judge, shall be and hereby is made and ordered the Final Decision of the State of Wisconsin, Real Estate Board.

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 25TH day of FEBRUARY, 1993.



STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	
	:	
JANET M. CROWE	:	PROPOSED DECISION
Respondent.	:	LS 9209044 REB

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

Janet M. Crowe Zastrow
P.O. Box 1952
Wausau WI 54402

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 December 9, 1992. The Complainant Division of Enforcement was represented by Attorney Charles Howden. The Respondent appeared in person, and was represented by Attorney Richard Weber of the firm Kelley, Weber, Pietz & Slater, S.C., 530 Jackson Street, Wausau, Wisconsin 54401.

On the basis of the entire record of the proceedings had in this matter, the Administrative Law Judge recommends that the Real Estate Board adopt the following Findings of Fact, Conclusions of Law, Order and Opinion as its Final Decision and Order in this matter.

FINDINGS OF FACT

1. Janet M. Crowe, now known as Janet M. Zastrow, is and was at all times relevant to this proceeding a real estate broker licensed to practice real estate in the state of Wisconsin pursuant to license #36694, originally issued on January 28, 1986.

2. On or about January 22, 1987, Crowe entered into a written agreement with Security Realty of Wausau, Inc. ("Security") whereby Crowe agreed to work as a broker-employee for Security. The agreement between Crowe and Security was to run for a period of one year.

3. In early November, 1987, Crowe went to the management of Williams Realty, Inc., of Wausau to apply for a broker-salesperson association with that firm. On November 27, 1987, Williams Realty offered her the position she had requested, and she agreed to begin work for Williams on January 1, 1988.

4. At the close of business December 31, 1987, Crowe informed Security that she was resigning, and would be associated with Williams Realty, Inc., of Wausau from and after January 1, 1988.

5. Shortly after January 1, 1988, Crowe and Williams Realty, Inc. entered into an employment agreement whereby Crowe was employed as a broker-employee of Williams, effective January 1, 1988.

6. Crowe filed, or caused to be filed, a "NOTICE OF EMPLOYMENT OR TRANSFER OF BROKER OR SALESPERSON LICENSE" with the State of Wisconsin Department of Regulation and Licensing, Bureau of Real Estate and Direct Licensing. The document was dated January 1, 1988, and represented that Crowe was transferring her employment from Security to Williams effective January 1, 1988.

7. The terms of the January 22, 1987, agreement between Crowe and Security provide, in part, that all listing contracts obtained by Crowe during the term of her employment with Security were the property of Security and were to remain the property of Security should Crowe terminate her employment with Security.

8. The agreement between Crowe and Security further provides that after the termination of the agreement, Crowe was not to use to her own advantage or for the advantage of any other person or corporation, any information gained for or from the files of the business of Security Realty. The agreement further prohibited Crowe, during the term of the agreement and for six months following any termination of the agreement, from directly or indirectly soliciting the listing of any real estate or property listed by Security during the term of their agreement.

9. During the month of December, 1987, Crowe, while still employed by Security, negotiated and drafted five exclusive residential listing contracts for the benefit of and in the name of Williams Realty without the knowledge or consent of Security:

<u>Seller</u>	<u>Property</u>	<u>Listing Date</u>
Melby	904 Nina, Wausau, WI	12/2/87
Kleinschmidt	3405 Bernard, Town of Weston, WI	12/24/87
Kauzlaric	1603 Lily Lane, Wausau, WI	12/8/87
Ackerman	504 Oak St, Rothschild, WI	12/26/87
Erlandson	1211 7th St., Wausau, WI	12/29/87

10. During the month of December 1987, Crowe, without the knowledge or consent of Security, shortened the listing terms of the following real estate listing contracts, which had been listed with Security during Crowe's term of employment with Security:

<u>Address Property</u>	<u>Original Listing Dates</u>	<u>New Ending Date</u>	<u>Date Change Made</u>
922 McIndoe Wausau, WI	11/23/87-5/23/88	12/31/87	12/29/87
533 S. 6th Ave. Wausau, WI	11/4/87-5/4/88	12/31/87	Amendment Undated
3405 Bernard Ave. Town of Weston, WI	11/20/87-2/25/88	12/24/87	12/24/87
6832 N. 128 Ave. Town of Berlin, WI	11/18/87-3/30/88	12/31/87	12/29/87
1205 Prospect Wausau, WI	9/18/87-3/18/88	12/31/87	12/31/87
6104 Randy Jay Town of Weston, WI	7/24/87-1/25/88	12/31/87	12/4/87

11. Commencing early in January, 1988, the properties described in paragraph 9 were listed with Williams through the efforts of Crowe.

12. On or about December 18, 1987, without the knowledge or consent of Security, Crowe presented an Offer to Purchase to, and drafted a counter-offer on behalf of, Kenneth and Ruth Melby for the sale of their residence located at 904 Nina, Wausau. At the time, the property was the subject of an exclusive listing sales contract between the Melbys and Williams.

CONCLUSIONS OF LAW

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

2. Respondent violated s. 452.14(3)(g), Stats., by representing Williams Realty, Inc. in obtaining listings and referrals prior to her employment with Williams Realty, Inc., during a time that she was employed by Security Realty of Wausau, Inc.

3. Respondent violated s. 452.14(3)(g) and (i), Stats., by representing Williams Realty, Inc., in the negotiation of an Offer to Purchase to Kenneth and Ruth Melby on behalf of Williams Realty, Inc., at a time when Respondent was employed by Security Realty of Wausau, Inc.

4. Respondent violated ss. 452.14(3)(i) and (k), Stats., and ss. RL 17.03(3) and 17.05(2), Wis. Admin. Code, by acting for the benefit of Williams Realty, Inc., in drafting listing contracts during December 1987, and in acting to arrange the early termination of existing listing contracts between Security Realty of Wausau, Inc., and various principals during December 1987, at a time when she was employed by Security Realty of Wausau, Inc.

ORDER

NOW, THEREFORE, IT IS ORDERED that the real estate license previously issued to Janet M. Crowe, now known as Janet Zastrow, be and hereby is **SUSPENDED** for a period of six months, effective 30 days from the date of this Order.

IT IS FURTHER ORDERED that the assessable costs of this proceeding be imposed on Respondent, pursuant to s. 440.22, Stats.

OPINION

Janet M. Crowe Zastrow is an intelligent, able, and successful real estate broker-salesperson. At the time of the events related here, she had held a real estate broker's license for almost two years, and had demonstrated her abilities by becoming one of the top producing real estate salespeople in the Wausau area. She is also self-serving to the point of dishonesty.

The evidence of Respondent's dishonesty in regard to her employer's interests is overwhelming. She testified that up until the very end of December, 1987, she really had not decided to leave Security Realty for Williams Realty; it is clear that she accepted the offer of employment she had sought out from Williams as soon as it was made in late November 1987. She testified that her activities in shortening the listings of various properties under exclusive listings with Security was done, always, at the seller's instigation, and that it was the clearly stated policy of Security to shorten listing contracts whenever the seller asked that it be done. The evidence is clear that it was emphatically not the policy of Security to release or shorten exclusive listing contracts at the request of sellers, and certainly not to do so without consulting the managing brokers.

Respondent testified that she was relying on the policy statement that "listing contracts should be for as long as the seller will allow" as permission to shorten or terminate contracts at sellers' request. It is clear that the context of the policy statement is to obtain the longest possible exclusive listing, not to release sellers from their contracts at their whim.

Respondent testified that the listings were shortened or terminated at the request of the various sellers, and that she had no part in suggesting or instigating the request. That testimony is incredible. In order to believe that Respondent had no part in suggesting or instigating the requests to terminate or shorten the listings, one would have to ignore her own testimony that she went to the sellers, in person, during the month of December to tell them that she was leaving Security, and was at least seriously considering associating with Williams immediately thereafter, and would therefore not be handling their property any longer so she could not guarantee that they would receive any particular attention at Security. While it may be true that Respondent never explicitly invited any seller to terminate a listing with Security, it is also clearly true that she did everything but issue the explicit invitation.

Respondent's conduct with regard to the listings she obtained for Williams during December 1987 is of a similar quality. She would negotiate and draft a listing contract with a prospective seller and then stop, tell the seller that she was going to leave Security and probably go to Williams, tell the seller that there was no guarantee that Security would do anything to effectively market the seller's property, and then ask where the seller wanted the listing contract to go. Having done that, she would "do what the seller wanted" and drop the listing contract at Williams for one of the managing brokers there to sign.

Respondent testified that she saw no problem with her practice of drafting listing contracts for the benefit of Williams while she was working for Security, on the grounds that it was her duty as a real estate professional to do what the seller wanted done. Were she an otherwise incompetent real estate broker, it might be that she truly believed that. She is, and clearly was,

an intelligent, ambitious, and skillful real estate broker, and it is not possible to reconcile those qualities with her claimed ignorance of her duties to Security, her employer, or with her claim that she understood herself to be a roving servant to the public wherever real estate was for sale. For one thing, she successfully completed a course in real estate practice, and passed the licensing examination; for another, she had practiced the profession for the better part of two years and clearly knew how it was her compensation was calculated; for another, she had twice signed contracts with Security detailing her relationship to Security and the respective rights and duties of herself and Security.

Respondent actively worked against the interests of Security, her employer, for the benefit of herself and Williams Realty. Respondent affirmatively acted to persuade sellers to terminate or shorten their contracts with Security, or to list initially with Williams, while she was employed by Security. She encouraged sellers to remove their properties from the market for a period of time so that she could benefit, and she did so knowing that she owed a fiduciary duty to both Security and the sellers. She took contracts she knew were not hers, and attempted to convert the value of those contracts to her benefit.

The testimony at the hearing was ambiguous as to what happened to the commissions from the sales of the properties Respondent arranged for her benefit and the benefit of Williams Realty. It is clear that Security immediately cried foul when it discovered what had been taken from it, and that Williams Realty responded by attempting to resolve the matter very quietly. It is clear that both Williams Realty and Respondent recognize now that those commissions are very sensitive, if only because of the civil and criminal actions which Security has pursued or requested. It is undeniably clear that both Respondent and Williams intended to profit from the commissions on the sale of those properties, and would have done so if not for Security being quick and emphatic about the wrong which was done to it.

Discipline is intended to protect the public, to rehabilitate a licensee who fails to conform to minimally competent practice standards, and to deter other licensees from the same or similar failings. In this case, Security Realty is part of the public which the rules regulating real estate practice are meant to protect. The fact that it was Security's employee that violated the rules, and that Security's own procedures allowed the violations to occur unnoticed, is as irrelevant to the basic violation as it is when a bank employee embezzles funds from a bank. It is Respondent's responsibility to conduct herself honestly, and it is no excuse that she was dissatisfied with management decisions or that her employer trusted her enough not to check on her every action.

Respondent offered testimony to the effect that it is common in the real estate profession to act substantially as she did, and that agencies do not consider it necessary to question the provenance of listing contracts that appear at the agency's office, complete but for the agency's

accepting signature, without any action by the listing agency. If one were to accept this disquieting statement as truth, deterrence of this behavior is clearly warranted. If it is not true, it is clearly necessary to indicate to Respondent that she is in error in her understanding of the standards of practice of her profession.

I am convinced that the violations here were planned with the intention of leading the sellers of the properties involved to make the specific request to amend their listing contracts, or to list with an agency not the Respondent's employer, and with full awareness that it was a violation of both the rules regulating the practice of real estate and Respondent's contract with Security for Respondent to perform the activities she encouraged the sellers to request. It is clear that Respondent worked all of December 1987 with the intent of shifting contracts from Security, where they would do her no benefit, to Williams, where she would profit from them.

The recommendation as to discipline is based in part on the seriousness of the violations, but I have also considered the disciplinary recommendation made by the Division of Enforcement at the hearing of this matter. The Division recommended a 60 day suspension of Respondent's license, combined with a requirement for remedial education. The evidence is such that I do not believe education is necessary; I am convinced that Respondent knew she was doing wrong in December 1987, and the course of events since then will only have impressed this fact further upon her. A long suspension is appropriate to deter similar conduct by Respondent or other licensees. It would be entirely inappropriate for all of the real estate licensees to share in the costs of this disciplinary action, so I would impose them upon Respondent alone.

Dated this 7th day of January, 1993.



James E. Polewski
Administrative Law Judge

BDLS2:2679

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times all week 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 February 26, 1993.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	AFFIDAVIT OF COSTS
JANET M. CROWE	:	BOARD LEGAL SERVICES
RESPONDENT	:	LS 9209044 REB

STATE OF WISCONSIN
COUNTY OF DANE, ss.

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

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

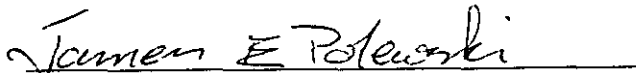
2. In the course of that employment, he was assigned Administrative Law Judge in the captioned case, and in the course of that assignment he expended the following amounts of time and incurred the following costs:

<u>Date</u>	<u>Activity</u>	<u>Time</u>
9/22/92	Prepare Prehearing Notice	15 m.
9/28/92	Preside at Prehearing conference	20 m.
	Prepare Prehearing memorandum and Order	30 m.
12/9/92	Preside at Hearing	6 hr.
12/10/92	Review documentary evidence	7 hr. 45 m.
1/4-1/7/92	Draft Proposed Decision	6 hr.
	TOTAL TIME:	20 hr. 50 m.

Administrative Law Judge expense, 20.833 hr @ \$25.16: \$ 524.16

Reporter Expense (Magne-Script, Madison): \$ 864.20

TOTAL ASSESSABLE COSTS, BOARD LEGAL SERVICES: \$1388.36


James E. Polewski

Sworn and subscribed before me this 7th day of January, 1993.


Notary Public

My Commission is Permanent.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	AFFIDAVIT IN SUPPORT
	:	OF MOTION FOR COSTS
JANET M. CROWE ZASTROW,	:	LS 9209044 REB
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 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

<u>Date</u>	<u>Activity</u>	<u>Time Spent</u>
12/18/91	Review file for Pic	1.5
1/92	Draft Stipulation	2.5
8/6/92	Draft Complaint and Notice of Hearing	2.0
9/2/92	Arrange Service of Complaint and Notice	.5
9/28/92	Receive and review answer and attend scheduling Conference by phone	.8
10/7/92	Review file and draft preliminary witness list	.7

10/19/92	Review file	.1
10/20/92	Correspondence	.1
11/5/92	Final witness list	.5
11/5/92	Travel Wausau and review depositions	4.0
11/6/92	Conference with witnesses and travel to Madison from Wausau	7.0
12/3/92	Review depositions and memo file	5.0
12/7/92	Preparation for trial including further review of depositions	6.0
12/8/92	Preparation of exhibits	6.0
12/9/92	Hearing of matter	8.0
1/7/93	Receipt and review of proposed decision	.5
1/19/93	Receipt and review of objections to disciplinary proceeding proposed order	1.0
1/23/93	Review transcript and draft response to objections	6.5
1/25/93	Final draft of response and correspondence	1.5
3/1/93	Draft Affidavit in support of costs	.5

TOTAL HOURS

54.70 hours

Total attorney expense for 54.70 attorney hours and minutes at \$30.00 per hour (based upon average salary and benefits for Division of Enforcement attorneys) equals: \$1641.00

MISCELLANEOUS DISBURSEMENTS

1. Total mileage Wausau/Madison 280 X 18.3¢	\$	51.24
2. Total meals	\$	26.30

3. Motel

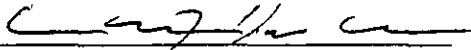
\$ 49.00

TOTAL EXPENSES

\$126.54

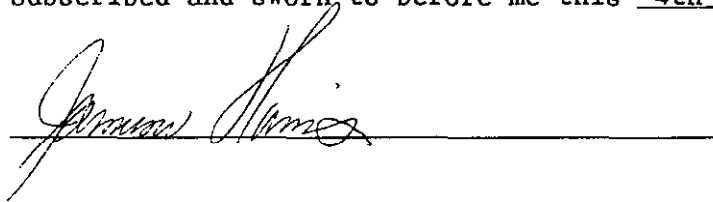
TOTAL ASSESSABLE COSTS

\$1767.54



Charles J. Howden, Attorney

Subscribed and sworn to before me this 4th day of March, 1993.



Notary Public

My Commission is Permanent.

/cjh

ATY2-3629