

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION AND LICENSING

IN THE MATTER OF THE APPLICATION  
FOR RENEWAL OF THE REAL ESTATE  
BROKER LICENSE OF

ROBERT J. JANE,  
RESPONDENT.

FINAL DECISION  
AND ORDER  
LS9310111REB

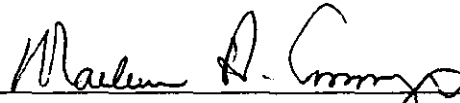
The State of Wisconsin, Department of Regulation and Licensing, having considered the above-captioned matter and having reviewed the record and the Proposed Decision of the Administrative Law Judge, makes the following:

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, Department of Regulation and Licensing.

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 1<sup>st</sup> day of March, 1994.

  
Marlene A. Cummings, Secretary  
Department of Regulation and Licensing

STATE OF WISCONSIN  
BEFORE THE DEPARTMENT OF REGULATION & LICENSING

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IN THE MATTER OF  
THE APPLICATION FOR RENEWAL OF  
THE REAL ESTATE BROKER LICENSE OF

ROBERT J. JANE,

LS9310111REB

Respondent

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PROPOSED DECISION

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

Robert J. Jane  
Glenbard Realty Co.  
315 South Main Street  
Lombard, IL 60148

State of Wisconsin  
Department of Regulation & Licensing  
1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708

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

A hearing in this matter was conducted on December 8, 1993, at 1400 East Washington Avenue, Madison, Wisconsin. The Division of Enforcement appeared by Attorney Charles J. Howden. Mr. Jane appeared in person and without legal counsel.

Based upon the entire record in this matter, the administrative law judge recommends that the Department of Regulation & Licensing adopt as its final decision in the matter the following Findings of Fact, Conclusions of Law and Order.

#### FINDINGS OF FACT

1. Robert J. Jane, 315 South Main Street, Suite #1, Lombard, Illinois, is licensed to practice as a real estate broker in Wisconsin by license #8735, issued on October 10, 1974.
2. On July 23, 1981 The Wisconsin Real Estate Examining Board issued its Final Decision and Order in the Matter of Disciplinary Proceedings Against Robert J. Jane, d/b/a Northwoods Land Company. The board found that Mr. Jane had violated various provisions of the real estate statutes and code pertaining to real estate trust accounts, including failure to prepare monthly reconciliations of a trust account, failure to enter check numbers and amounts into journal and ledger, failure to withdraw commissions within 24 hours, failure to make timely deposits of trust funds, failure to keep funds in a trust account until consummation or termination of contracts, and failure to maintain sufficient funds in a trust account. The board accepted the voluntary surrender of respondent's license.
3. Respondent's license to practice as a real estate broker was reinstated on January 1, 1983.
4. On September 27, 1990 The Wisconsin Real Estate Examining Board issued its second Final Decision and Order in the Matter of Disciplinary Proceedings Against Robert J. Jane. The board found that Mr. Jane had violated various provisions of the real estate statutes and code, including failure to accurately disclose material adverse factors to a party, failure to provide a receipt to acknowledge payment of earnest money, failure to deposit trust funds into a trust account, and failure to disclose material facts concerning the receipt of earnest money in an approved manner. The board ordered that respondent's license be suspended for a period of six months, and that upon reinstatement, the license be limited to require that he practice under the supervision of another broker for at least two years and that

he observe conditions related to his handling of trust funds.

5. The limitations on respondent's license were terminated on September 27, 1992.

6. In addition to his Wisconsin license, respondent holds real estate licenses in Florida, Minnesota, Illinois and Iowa. Respondent's Florida license is as a salesperson only.

7. On January 21, 1992, the State of Florida, Department of Professional Regulation, Florida Real Estate Commission issued its *Final Order* in the matter of *Department of Professional Regulation, Division of Real Estate v. Robert J. Jane*. Through a Stipulation, respondent neither admitted nor denied allegations set forth in an Administrative Complaint filed by the Florida Department of Professional Regulation, Division of Real Estate (DPR). The complaint charges that respondent was guilty of fraud, misrepresentation, concealment, false promises, false pretenses, and dishonest dealing by trick, scheme or device; culpable negligence or breach of trust in a business transaction; failure to immediately place trust funds with his registered employer; operating as a broker while licensed as a salesman; collecting money in connection with a real estate transaction not in the name of the employer and without express consent of the employer; and commencing an action for a commission against a person who is not his registered employer; all in violation of the Florida Statutes. The Florida Real Estate Commission ordered that respondent be reprimanded, fined \$500, and placed on probation for one year with conditions and required education.

8. By its Final Decision and Order Denying License Renewal Application dated August 19, 1993, the Wisconsin Department of Regulation & Licensing (department) denied respondent's application for renewal of his broker license. The Order concludes that respondent's violation of the Florida real estate laws constitutes a violation of sec. RL 24.17(1), Code, and that, based upon that violation and the two previous disciplinary actions in Wisconsin, denial of renewal is necessary to protect the public health, safety or welfare, within the meaning of, and as authorized by, sec. 440.08(4), Stats.

#### CONCLUSIONS OF LAW

1. The department has jurisdiction in this matter under §§440.08(4), 452.05(1)(a) and 452.14(1), Stats.

2. In having violated the real estate licensing laws of the State of Florida, respondent has violated a law the circumstances of which substantially relate to the practices of a real estate broker, within the meaning and in violation of sec. RL 24.17(1), Code. Pursuant to sec. RL 24.01(3), Code, respondent has thereby demonstrated incompetence to act as a broker in such manner as to safeguard the interests of the public, in violation of sec. 452.14(3)(i), Stats.

3. Respondent's violation of the real estate laws of the State of Florida, in demonstrating incompetence to act as a broker in such manner as to safeguard the interests of the public, constitutes basis for a finding that denial of an application for renewal of the license to practice as a broker is necessary to protect the public health, safety or welfare, within the meaning of sec. 440.08(4), Stats.

#### ORDER

NOW, THEREFORE, IT IS ORDERED that the Order of the Department of Regulation and Licensing denying renewal of the broker license of Robert J. Jane is affirmed, and the renewal of the license is therefore denied.

IT IS FURTHER ORDERED that not sooner than three years from the date of the order of the department adopting the terms of this Order, Robert J. Jane may submit evidence satisfactory to the department that he has not been subject to any disciplinary complaint or order of any nature in any state where he is licensed or where he has become licensed during the interim period. Upon receipt of such evidence, the department shall consider renewal of the broker license upon such terms and conditions as are deemed in the discretion of the department to be appropriate.

#### OPINION

The Administrative Complaint filed in this matter by the Florida Real Estate Commission included the following "Essential Allegations of Material Fact."

5. On or about July 12, 1990, the Respondent, without the knowledge or consent of Respondent's employing broker, solicited and obtained a residential lease between Pauline C. Mesker, as landlord, and Todd Fisher, as tenant. . . .

6. On or about July, 1990, the Respondent, without the knowledge or consent of Respondent's employing broker, accepted directly or indirectly a \$4500 first and last month's rent plus a \$1500 security deposit from the tenant which funds should have been delivered to the property owner/landlord but the Respondent placed or caused to be placed the fund into the trust account of Robert C. Clark, Esquire.

7. On or about July 16, 1990, Respondent advised the true property owner and landlord in the foregoing lease, Davis W. Mesker, of the lease and that: "Should Todd Fisher or anyone acting on his behalf purchase the property my broker's fee is 10% of the purchase price." . . .

8. Davis W. Mesker never received any rental funds reference the lease dated July 12, 1990, and thereby contacted Respondent's broker, Lois S. Whittle, who at the time was not aware of the lease transaction.

9. On or about September 11, 1990, the Respondent individually brought a civil complaint against the tenant, Todd Fisher, for the \$6000 deposit being held by Robert C. Clark, Esquire, for payment of a real estate commission. . . .

10. At no time material hereto, did the Respondent deliver the \$6000 deposit to Respondent's employing broker, nor did he inform his employing broker of the residential lease transaction.

At hearing, Mr. Jane attempted to explain away the various allegations of the complaint, asserting that they were either not true or that they inaccurately characterized the true facts. In terms of the allegation that he had caused the rent and earnest money deposits to be deposited in an attorney's trust account rather than delivering them to his employing broker, Mr. Jane explained that the decision to place the funds in the attorney's trust fund was made by the lessee rather than by him (Mr. Jane perhaps proves too much. In Wisconsin, as in Florida, it is a violation of the rules relating to trust funds for a salesperson to fail to promptly submit the funds to the salesperson's employer-broker -- regardless of what the lessee would like to see done with them). In responding to the allegation that he represented

himself as a broker in correspondence with a client, Mr. Jane asserts that the reference was nothing more than an innocent use of the title in an informal context. Finally, Mr. Jane represents that the fact that the suit for payment of a real estate commission was brought in his name rather than in that of his former employer was nothing more than a simple error committed by his attorney.

Mr. Jane's explanations seem somewhat implausible, but it is nonetheless true that the allegations of Florida's Administrative Complaint are simply that. Consequently, the actual facts and circumstances surrounding the stipulated Final Order of the Florida Real Estate Commission, by which respondent neither admitted nor denied the alleged facts, may not be determined with specificity. Nor need they be; for the violation here is based on the disciplinary action taken by the Florida authority rather than on the underlying adjudicative facts. This does not mean, however, that evidence of the allegations of the Florida Complaint are not admissible for the purpose of establishing the nature of the conduct which provided the basis for the disciplinary action. See *Lee v. State Board of Dental Examiners*, 29 Wis. 2d 330 (1965). Accordingly, and notwithstanding Mr. Jane's attempts to diminish the significance of the circumstances leading to the disciplinary action, it may be noted that he stipulated to the publication in the Florida media of the following characterization of the Florida proceeding:

Robert J. Jane, salesman, Vero Beach, Reprimanded, fined \$500, 1 year probation with conditions and education: culpable negligence, failed to immediately place deposit with his registered employer, operating as a broker while licensed as a salesman and commencing or maintaining an action for a commission against a person who is not his registered employer.

Mr. Jane indicated that his failure to defend against the licensing complaint brought in Florida resulted from his having neither the time nor the money to travel from Minnesota to Florida to do so. If that is in fact the only reason he agreed to the Florida action, then it may be concluded that his decision was ill-advised. What he now confronts is his third disciplinary action in this state involving conduct evincing disregard for the real estate laws of this and of other states.

It is well established that the objective of licensing discipline is the protection of the public by promoting the rehabilitation of the licensee, and by deterring other licensees from engaging in similar misconduct. *State v. Aldrich*, 71 Wis. 2d 206 (1976). Punishment of the licensee is not an appropriate consideration. *State v. McIntyre*, 41 Wis. 2d 481 (1968). In attempting to fashion discipline in this case within the



Robert J. Jane

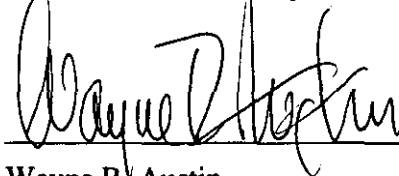
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context of these objectives, the previous disciplinary actions, which are central to the question of rehabilitation, are of critical importance, for the Wisconsin Supreme Court, in *McIntyre, supra*, has stated that prior discipline is a factor which is required to be taken into consideration in determining appropriate discipline in licensure actions.

Also important in that regard is the fact that the previous disciplinary actions in Wisconsin, like the one in Florida, involved problems with respondent's handling of trust funds. In the 1981 action, an audit of respondent's trust fund records revealed numerous discrepancies, including a number of overdrafts and failures to timely deposit funds. In the 1990 action, one count involved respondent's failure to provide a receipt for delivery of an earnest money deposit, failure to place the deposit in a trust account and failure to either refund the deposit or notify the buyer of his intent to retain the earnest money. The second count found that respondent had provided an earnest money receipt to a buyer indicating receipt of an earnest money deposit which was not in fact paid until the time of closing.

Respondent's claim at hearing that no one has ever lost any earnest money as a result of his actions may or may not be accurate. Whether it is or is not, however, respondent has been repeatedly disciplined for his handling of trust funds as well as for other violations, and there is nothing in this record which provides any assurance that if respondent is permitted to resume practice in Wisconsin, the repeater aspect of his misconduct will not be perpetuated. Accordingly, the conclusion is inescapable that denial of his application for renewal is necessary for the protection of the safety and welfare for the citizens of Wisconsin. If respondent is able to practice in the other states where he is licensed for a minimum of three years without further incident, then he should be permitted to attempt to convince the department that his license may be safely returned. Until he is able to do that, however, he should not be permitted to practice in this state.

Dated this 14th day of February, 1994.



Wayne R. Austin

Administrative Law Judge

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## NOTICE OF APPEAL INFORMATION

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**Notice Of Rights For Rehearing Or Judicial Review, The Times Allowed For Each, And The Identification Of The Party To Be Named As Respondent.**

**Serve Petition for Rehearing or Judicial Review on:**

THE STATE OF WISCONSIN DEPARTMENT OF REGULATION AND LICENSING

1400 East Washington Avenue  
P.O. Box 8935  
Madison, WI 53708.

**The Date of Mailing this Decision is:**

MARCH 2, 1994.

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### 1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

### 2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)