

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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BY THE STATE OF WISCONSIN  
BEFORE THE REAL ESTATE BOARD

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IN THE MATTER OF THE DISCIPLINARY :  
PROCEEDINGS AGAINST :  
 : FINAL DECISION AND ORDER  
FIRST CHOICE REALTY LLC. :  
AND MARY J. HILL, :  
RESPONDENTS. : LS0512011REB

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Division of Enforcement Case File # 04 REB 123

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

First Choice Realty LLC.  
607 Superior Ave.  
Tomah, WI 53660

Mary J. Hill  
607 Superior Ave.  
Tomah, WI 53660

Wisconsin Real Estate Board  
P.O. Box 8935  
Madison, WI 53708

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

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **First Choice Realty of Tomah LLC** is a licensed Real Estate Business Entity in the State of Wisconsin, license # 91 700479. The most recent address on file with the Department of Regulation and Licensing is 607 Superior Ave., Tomah, WI 54660.
2. **Mary J. Hill**, date of birth 06/21/57, is a licensed real estate broker in the State of Wisconsin, license # 90-411, which was first granted on 09/17/96. Ms. Hill's most recent address on file with the Department of Regulation and Licensing is 607 Superior Ave., Tomah, WI 54660.
3. At all times relevant to the facts set forth below, Ms. Hill was broker/owner of First Choice Realty of Tomah LLC.
4. Ms. Hill is a licensed auctioneer in the State of Wisconsin, license # 52 560, which was first granted on 03/01/96. Ms. Hill is owner of Brandau-Hill Auction Service, license # 53 76 located in Tomah WI.
5. Connie S. Mumm is a licensed real estate salesperson in the State of Wisconsin, license # 90-411.

# 94-44109, which was first granted on 10/17/95. Ms. Mumm's most recent address on file with the Department of Regulatory Licensing is 2020 Gruman Dr., Tomah, WI 54660.

6. At all times relevant to the facts set forth below, Ms. Mumm was employed as a real estate salesperson for First Choice Realty of Tomah LLC.

7. On or about March 20, 2002, Ms. Mumm entered into a Residential Listing Contract-Exclusive Right to Sell with Michael Gnewikow to sell his property located at 1408 Superior Ave., Tomah, WI. The listing price was to be \$86,900.00. The terms of the contract set forth at lines 39 and 40 indicate that the contract was to expire on September 30, 2002.

8. The Listing Contract expired on September 30, 2002.

9. On or about January 8, 2003, Mr. Gnewikow asked First Choice Realty to continue marketing his property. In the process of preparing a new Listing Contract Ms. Mumm drafted an AMENDMENT TO LISTING CONTRACT for Mr. Gnewikow changing the expiration date of the listing contract from September 20, 2002, to June 30, 2003. Lines 12-18 of the Amendment read: "Listing to be Auctioned-Advertise extensively 6-8 weeks prior. Marketing- House to be auctioned on April 26, 2003, by Brandau-Hill Auction Service & First Choice Realty LLC. Commission 7% seller's fee & 3% buyer marketing fee. Seller has 48 hours to accept, reject, or counter any & all offers- day of Auction." This Amendment was signed by Mr. Gnewikow on January 21, 2003, four months after the Listing Contract expired. Although this January 8, 2003, amendment was intended to revive the March 20, 2002, listing contract which had terminated on September 20, 2002, the listing contract was of questionable validity and the proper practice would have been to prepare a new Residential Listing Contract-Exclusive Right to Sell agreement with Mr. Gnewikow reflecting new dates for the term of the contract. Other than the January 8, 2003, Amendment to the Listing Contract, First Choice Realty did not enter into a written auction contract with Brandau-Hill Auction Service indicating what fees were to be paid to the auction company. Although sec. RL 127.04 permits the use of a listing contract as a written auction contract, the amendment did not contain all the information required by Wis. Admin. Code § RL 124.02.

10. Other than the January 8, 2003, Amendment to the Listing Contract, First Choice Realty did not enter into a written auction contract with Brandau-Hill Auction Service indicating what fees were to be paid to the auction company. Although sec. 127.04 permits the use of a listing contract as a written auction contract, the amendment did not contain all the information required by Wis. Admin. Code § RL 124.02.

11. The auction was held on April 26, 2003. The auction documents said "There will be a 3% buyer's fee added to the bid." The auction resulted in Ms. Mumm drafting a RESIDENTIAL OFFER TO PURCHASE for Frank Rasch for the 1408 Superior Ave., property. The offered price was \$72,100.00 (i.e. \$70,000.00 plus \$2,100 buyer's fee) with closing to occur on or before May 30, 2003. Line 8 reads: Earnest Money of \$2,000.00 accompanies the offer. Line 317 reads: "this transaction will be used in a 1031 Tax Exchange Program." A 1031 Tax Exchange is commonly referred to as a "Starker Exchange."

12. This offer was rejected by Mr. Gnewikow and the \$2,000.00 earnest money was returned to Mr. Rasch.

13. On or about May 5, 2003, Ms. Mumm called Mr. Rasch and indicated the owners wanted to counter offer \$76,000.00, but Mr. Rasch turned it down.

14. On or about May 10, 2003, Ms. Mumm called Mr. Rasch and said the owners indicated he could have the property for \$75,000.00, but Mr. Rasch again turned it down.

15. On or about May 13, 2003, Ms. Mumm asked Mr. Rasch if he would take the property for \$70,000.00. Mr. Rasch agreed to the \$70,000.00.

16. Ms. Mumm failed to draft a new Offer To Purchase reflecting the new purchase price.

17. In order to complete the Starker Exchange and to establish the amount of the exchange, Ms. Mumm was required to forward a copy of an accepted Offer to Purchase to Starker Services Inc. ("SSI") in California.

18. In order to close the transaction, and in the absence of a new Offer to Purchase reflecting the purchase price of

\$70,000.00, Ms. Mumm had Mr. Gnewikow sign the original rejected Offer on May 27, 2003, with a purchase price of \$72,100.00. Mr. Gnewikow dated his signature 5/27/03. The number "5" was then altered to read "4" making the date of acceptance of the Offer to Purchase 4/27/03.

19. The original Offer To Purchase that had been rejected by the seller on April 27, 2003, but which now bore an accepted date of 4/27/03, was forwarded to SSI by Ms. Hill. \$72,100.00 plus \$11.00 "settlement charges to borrower" was forwarded by SSI to First Choice Realty of Tomah LLC.

20. On or about May 30, 2003, the day of closing, Mr. Rasch noted that there was not a new Offer to Purchase document to reflect his agreed upon offer of \$70,000.00. When Mr. Rasch noticed that it was the rejected offer that Ms. Mumm was using at the closing, Mr. Rasch protested but Ms. Mumm advised Mr. Rasch that First Choice Realty of Tomah LLC. had already received \$72,100.00 from Starker Services and if he didn't go through with the closing she would keep \$2,100.00, no matter what.

21. On May 30, 2003, Ms. Mumm prepared an Amendment To Offer To Purchase which read: "there will be no money applied or held in First Choice Realty Trust Account as the \$72,100 will be totally applied and used in a 1031 Starker Exchange." Mr. Rasch and Mr. Gnewikow signed the amendment. The number \$72,000 is written over to read \$72,111 with any initials or other indication that the signers of the document approved the change.

22. Although the amendment stated that that \$72,111.00 will be totally used in the Starker Exchange, only \$70,000.00 was used for the purchase of real estate. Line 101 on the closing statement reads: "Contract sale price 72,100.00;" Line 701 reads \$2100 to First Choice Realty LLC. Buyers Fee."

23. Since the property did not sell at auction, Brandau-Hill Auction Service was not entitled to the 3% buyer market fee that was listed on the amendment dated January 21, 2003.

24. No agreement in writing existed for the payment of \$2,100.00 commission paid, or to any "buyer's fee" to First Choice Realty.

### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondents First Choice Realty LLC. and Mary J. Hill have violated:

a. Wisconsin Administrative Code § RL 24.03(2)(b), and Wis. Stat. § 452.14(3)(k), by participating in conduct which constitutes improper, fraudulent or dishonest dealing by charging the buyer a \$2,100.00 buyers market fee which neither the real estate agency nor the auction service was entitled to;

b. Wis. Stat. §§ 452.133(1)(a), and 452.133(1)(b), by failing to provide brokerage services to all parties to the transaction honestly, fairly and in good faith, and by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties;

c. Wis. Admin. Code §§ RL 17.08(1), and RL 17.08(2), by failing to properly supervise the activities of salesperson Connie Mumm.

### ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. **Mary J. Hill**, real estate broker's license #90-48589 be, and hereby is, **REPRIMANDED**.
2. **First Choice Realty of Tomah LLC**, license # 91 700479 be, and hereby is, **REPRIMANDED**.

3. Respondent **Mary J. Hill and First Choice Realty of Tomah LLC** shall jointly and severally, within 60 day date of this Order, pay a **FORFEITURE** in the amount of \$1,000.00.

Payment shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor  
Division of Enforcement  
Department of Regulation and Licensing  
P.O. Box 8935, Madison, WI 53708-8935  
Telephone (608) 261-7904, Fax (608) 266-2264

4. **Mary J. Hill**, within 6 months of the date of this Order, successfully completes the following courses:

a. business ethics class of the broker's course or an equivalent course on business ethics of at least 4 hours;

b. real estate contracts class of the broker's course or an equivalent course on real estate contracts of at least 4 hours;

and submit proof of the same in the form of verification from the institution providing the education to the address stated below. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and well and may result in a summary suspension of Respondents' license. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event Respondent to timely submit any payment, or complete the education as ordered the Respondent's license SHALL REMAIN/BE SUSPENDED without further notice or hearing, until Respondent has complied with the terms of this Order.

6. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: Richard Kollmansberger  
A Member of the Board

12/01/05  
Date