

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
ANDREA D. JOHNSON, :
RESPONDENT. : LS-0510171-REB

Division of Enforcement Case File # 04 REB 011

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

Andrea D. Johnson
19375 Baythorn Way
Brookfield, WI 53045

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. **Andrea D. Johnson**, date of birth 09/17/68, is a licensed real estate broker in the State of Wisconsin, license # 90-51409, which was first granted on 01/24/03. Ms. Johnson's most recent address on file with the Department of Regulation and Licensing is 19375 Baythorn Way, Brookfield, WI 53045.
2. At all times relevant to the facts set forth below, Ms. Johnson was employed as a real estate broker for Realty Executives in Hales Corner, Wisconsin.
3. On or about July 23, 2003, Mark L. Sobczak noticed a two-unit rental property for sale located at 5015-5017 Coldspring Road, Greenfield WI. Mr. Sobczak stopped at the property in order to retrieve a copy of the information sheet from the Realty Executives information box that was in the front lawn. The property information sheet also showed a Realty Executives logo on the bottom.
4. Mr. Sobczak and his wife, Darlene Reinke (the buyers), contacted their real estate agent, Jerri Haubrich, and asked her to obtain additional information about the property and schedule a walk through. The buyers believed the property was for sale through Realty Executives. Ms. Haubrich attempted to search the MLS for a listing of the property but was unsuccessful. Ms. Haubrich contacted another realtor who had previously sold the property and asked who the listing broker was. The realtor explained to Ms. Haubrich that the property was owned by Ms. Johnson and gave Ms. Haubrich Ms. Johnson's phone number.

5. On or about July 24, 2003, the buyers walked through the Coldspring Road property and asked about the leases on the two units. Ms. Johnson stated that one of the leases expired on August 31, 2003, and the tenants were moving out but she had not located another tenant because she thought that the buyers might want to live there. Ms. Johnson stated the other rental unit was rented with a month-to-month lease.

6. On or about July 24, 2003, Ms. Haubrich drafted an Offer To Purchase for the buyers to purchase the Coldspring Rd. property. The closing date was to be no later than August 25, 2003. The Offer was faxed to Ms. Johnson at the Realty Executives office.

7. On or about July 24, 2003, Ms. Johnson faxed to Ms. Haubrich a commission agreement, on Realty Executives letterhead, by which Ms. Johnson agreed to pay Ms. Haubrich a 2% commission. The agreement also shows that the property is For Sale By Owner.

8. The Offer dated July 24, 2003, was countered by Ms. Johnson using a Realty Executives form. In the counter-offer, Ms. Johnson also instructed Ms. Haubrich that the property was For Sale By Owner and not to fax anything to the Realty Executives office. On July 25, 2003, the buyers accepted Ms. Johnson's Counter Offer.

9. After receiving copies of the leases, the buyers noted that the unit that Ms. Johnson represented as a month-to-month lease was in fact rented not with a month-to-month lease but with a lease that expired June 30, 2004. The lease also showed the unit being rented at \$880.00 a month instead of \$940.00 a month as was represented by Ms. Johnson.

10. During the month of August, Ms. Johnson agreed to let the buyers place a "For Rent" sign at the property in or to rent the unit that was being vacated at the end of August. Ms. Johnson gave the buyers permission to enter the property for purpose of showing the unit to perspective renters and for having a washer and dryer delivered. Ms. Johnson also allowed the buyers to enter into a rental agreement with new tenants and to accept security monies.

11. On or about August 20, 2003, Ms. Johnson discovered that her property was encumbered by mortgages of which she had been unaware, and that there was a significant prepayment penalty for one of the mortgages. On or about August 21, 2003, Ms. Johnson called the title company and told them that the sale could not close.

12. On or about August 21, 2003, the title company called Ms. Haubrich and informed her that Ms. Johnson was not going to close on the transaction, and the file was being given to the owner of the title company. The title company also informed Ms. Haubrich that she should call Ms. Johnson and talk with her directly.

13. Shortly after receiving the call from the title company, Ms. Haubrich received a call from attorney Emmanuel Mamalakis who identified himself as Ms. Johnson's attorney and informed Ms. Haubrich that she, her Real Estate Office, the buyers, and Citizen Bank were all prohibited from contacting the title company or Ms. Johnson.

14. On or about September 3, 2003, Mr. Mamalakis notified the buyers' attorney, Mr. Krawczke, that "unfortunately at this time we are unable to clear the encumbrances to the title. And want to offer you the five day period provided in line 210 of the offer to purchase, in order to waive any objection you may have to these encumbrances." By this letter Mr. Mamalakis again warned Mr. Krawczke to not contact anyone that is being represented by his firm or any individuals not included in the transaction.

15. On or about September 4, 2003, Mr. Krawczke responded to Mr. Mamalakis' letter insisting that Ms. Johnson did not have the option to cancel a binding Offer to Purchase and refuse to sell the property simply because she did not want to pay a prepayment penalty in order to satisfy an existing mortgage. Mr. Krawczke gave Mr. Mamalakis until the next day for Ms. Johnson to sign an amendment extending the closing date to September 15, 2003.

16. On or about September 5, 2003, Mr. Mamalakis responded to Mr. Krawczke's letter informing him that "the title problems that you were informed of previously, (which are the only problems that exist) cannot be solved by that time."

17. Ms. Johnson did not sign the amendment changing the closing date, nor did she sign a mutual release agreement to return the \$1,000.00 earnest money, nor did she reimburse the buyers for the washer and dryer that they had installed in one of

the rental units.

18. This transaction failed to close and the buyers threatened a civil suit but, faced with the cost of litigation, they instead filed an Affidavit of Interest against the property on September 18, 2003.

19. On June 29, 2005, after this disciplinary action was commenced, a release was completed under which Ms. Johnson paid the buyers \$6,670.09 and they withdrew their Affidavit of Interest in the property.

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. The conduct described above in paragraphs 3-19 above, constitutes a violation of:
 - a. Wisconsin Administrative Code § RL 24.04(1), licensees shall not advertise in a manner which is false, deceptive, or misleading.
 - b. Wis. Stat. § 452.14(3)(i), demonstrated incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards the interests of the public by agents or salespersons or advertising.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Andrea D. Johnson, license #90-51409 be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED that:

2. Within 60 days of the date of this Order, Respondent shall pay the costs of this proceeding in the amount of \$4,873.89. 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) 267-3817, Fax (608) 266-2264

IT IS FURTHER ORDERED that:

3. Within six months of the date of this Order, the Respondent shall successfully complete the Business Ethics module of the Broker's Pre-License Program, or an equivalent course in real estate ethics, and submit proof of the same in the form of verification from the institution providing the education to the Department Monitor at the address above. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirement that is or may be instituted by the Board or the Department of Regulation and Licensing.
4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and well-being and may result in a summary suspension of Respondent's 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 fails to timely submit any payment as ordered or fails to timely complete the required education, the Respondent's license SHALL REMAIN/BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

6/22/06
Date