

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
JANIS J. ELMER,	:	<i>ORDER 0000367</i>
RESPONDENT.	:	

Division of Enforcement Case File No. 07 REB 215

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

Janis J. Elmer
3691 T-Bird Way
Cottage Grove, Wisconsin 53527

Real Estate Board
Post Office Box 8935
Madison, Wisconsin 53708-8935

Department of Regulation and Licensing
Division of Enforcement
Post Office Box 8935
Madison, Wisconsin 53708-8935

PROCEDURAL HISTORY

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

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

FINDINGS OF FACT

1. Janis J. Elmer (Date of Birth of December 6, 1963) is duly licensed to practice as a Real Estate Salesperson in the state of Wisconsin (license #94-53845). This license was first granted on November 9, 2001, and is current until December 14, 2010. The last address Ms. Elmer reported to the Department of Regulation and Licensing (hereinafter "Department") is 3691 T-Bird Way, Cottage Grove, Wisconsin 53527.

2. Janis J. Elmer was disciplined by the Wisconsin Real Estate Board on December 4, 2008. The basis for the discipline was that Ms. Elmer failed to put a party's agreement in writing. Ms. Elmer was reprimanded by the Real Estate Board and ordered to pay \$1,000.00 in costs. A copy of the Real Estate Board's Stipulation and Final Decision and Order is attached as Exhibit A. Exhibit A is incorporated by reference into this Order.

3. On or about May 7, 2007, Ms. Elmer was convicted on one count of felony Theft in Business Setting – More than \$2,500.00 in Dane County, Wisconsin Circuit Court (Case Number 06CF2211). True and correct copies the Criminal Complaint and the Judgment of Conviction are attached as Exhibit B. Exhibit B is incorporated by reference into this Order.

4. The circumstances of the conviction arise out of Ms. Elmer's employment at a non- real estate business.

5. The circumstances of the 2007 felony convictions substantially relates to the practice of real estate.

6. Ms. Elmer did not inform the Department of her May 7, 2007, felony conviction until May 15, 2007.

7. In resolution of this matter, Janice J. Elmer consents to the following Conclusions of Law and Order.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction over this matter, pursuant to Wis. Stat. sec. 440.20.

2. The Wisconsin Real Estate Board is authorized to enter into the attached stipulation, pursuant to Wis. Stat. sec. 227.44(5).

3. By the conduct identified in Findings of Fact 3 and 6, Janice J. Elmer has violated Wis. Admin. Code sec. RL 4.09(2) - A holder of any of the credentials set forth in s. RL 4.07 who is convicted of a felony or misdemeanor in this state or elsewhere shall notify the department in writing of the date, place and nature of the conviction or finding within 48 hours after the entry of the judgment of conviction. Notice shall be made by mail and shall be proven by showing proof of the date of mailing the notice. Notice shall include a copy of the judgment of conviction and a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime of which the credential holder was convicted are substantially related to the practice of the credential holder.

4. By the conduct identified in Finding of Fact 3, Janice J. Elmer has violated Wis. Admin. Code sec. RL 24.17(1) - Licensees may not violate, or aid or abet the violation of, any law the circumstances of which substantially relate to the practices of a real estate broker or salesperson.

5. By the conduct identified in Finding of Fact 3, Janice J. Elmer has violated Wis. Admin. Code sec. RL 24.17(2) - The board may discipline a licensee on the basis of a conviction of any crime, the circumstances of which substantially relate to the practice of real estate. A certified copy of a judgment of a court of record showing such conviction, within this state or without, shall be presumptive evidence of conviction.

6. By the conduct identified in Findings of Fact 3 and 6, Janice J. Elmer has violated Wis. Admin. Code sec. RL 24.17(2)(3) - Licensees shall not violate any provisions or terms or conditions of, or aid or abet the violation of ch. 452, Stats., chs. RL 11 to 26 or any disciplinary order of, the real estate board.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Real Estate Salesperson's license of Janice J. Elmer (94-53845) shall be LIMITED as follows:

1. Janice J. Elmer shall be prohibited from any and all access to any real estate trust account, and she shall not handle or otherwise be responsible for any monies in any real estate transaction for a period of ONE (1) year following the effective date of this Order.
2. Janice J. Elmer shall not make any application to the Department of Regulation and Licensing for a Real Estate Broker license for a period of ONE (1) year following the effective date of this Order.
3. Janice J. Elmer shall immediately provide her real estate employer(s) with a copy of this Order, and provide the Order to any subsequent employer(s) for a period of ONE (1) year following the effective date of this Order.

After a period of ONE (1) year following the effective date of this Order, and conditioned on the completion of the terms of her probation with the Wisconsin Department of Corrections pursuant to Cane County Circuit Court Case No. 06 CF 2211, Janice J. Elmer may petition the Department Monitor, in writing, requesting the end of the above-referenced limitations against her real estate salesperson's license. The petition shall also include the following: 1) a letter from the Wisconsin Department of Corrections' Probation Agent supervising Ms. Elmer's probation stating that Ms. Elmer's term of probation has ended; and 2) a letter from Ms. Elmer's current supervising broker stating that the supervising broker supports the removal of the limitations on Ms. Elmer's Real Estate Salesperson license.

The decision to lift the limitations on Ms. Elmer's Real Estate Salesperson license shall be at the sole discretion of the Real Estate Board. Denial in whole or in part of any petition brought by Ms. Elmer hereunder shall not constitute denial of a registration or license and shall not give rise to a contested case within the meaning of Wis. Stat. secs. 227.01(3) and 227.42.

IT IS FURTHER ORDERED that Janice J. Elmer shall pay full costs of the investigation and prosecution of this matter, in the amount of SIX HUNDRED FIFTY and NO/100 dollars (\$650.00).

Payment shall be made within 120 days of the effective date of this Order by ***certified check or money order***, payable to the Wisconsin Department of Regulation and Licensing and sent to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
Post Office Box 8935
Madison, Wisconsin 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

IT IS FURTHER ORDERED that violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Ms. Elmer'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 that Ms. Elmer fails to timely submit payment of the costs as set forth above, then Ms. Elmer's licensure (94-53845) may, in the discretion of the Board or its designee, be **SUSPENDED**, without further notice or hearing, until Respondent has complied with said payment of costs.

This Order shall become effective upon the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: *Isabel Weirich*
On behalf of the Board

Date *8/26/10*

2008
REB

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF	:	
DISCIPLINARY PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	
JANIS J. ELMER,	:	LS <u>08120417</u> REB
RESPONDENT	:	

Division of Enforcement Case File # 04 REB 306

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Janis J. Elmer
3691 T-Bird Way
Cottage Grove, WI 53527

Real Estate Board
P.O. Box 8935
Madison, WI 53707-8935

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

PROCEDURAL HISTORY

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 Real Estate Board (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. Respondent Janis J. Elmer is licensed in the State of Wisconsin as a Real Estate Salesperson, license # 94-53845. This license was first granted to her on 11/09/2001 and is current through 12/14/2008. The most recent address on file with the Department of Regulation and Licensing for Ms. Elmer is 3691 T-Bird Way, Cottage Grove, WI 53527.

STATE'S
EXHIBIT

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2. At all times relevant to this action, Ms. Elmer was the listing agent for Lot 22 of Hawthorne Park Estates located on Lexington Drive in the Village of Oregon, WI.

3. On April 19, 2003, Jessica Dern signed a residential Offer to Purchase for Lot 22 of Hawthorne Park Estates that included a building contract for a 2-story home.

4. At the time the Offer to Purchase was signed, the Declarations and Covenants for Hawthorne Park Estates provided that Lot 22 was designated as a single family lot to be used for a single family residence.

5. On or about September 15, 2003, the developer filed and recorded a Declaration of Condominium that changed Hawthorne Park Estates, including Lot 22, from single family residences to condominiums.

6. At the closing on October 3, 2003, the closing documents signed by Ms. Dern identified the property she was purchasing as a condominium.

7. Respondent Janis J. Elmer did not at any point draft an Amendment to the Offer to Purchase to reflect the parties' agreement and understanding that the property had been changed from a single family residence to a condominium.

CONCLUSIONS OF LAW

1. The Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 454.15, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondent Janis J. Elmer has violated Wis. Admin. Code § RL 24.08 by failing to put the parties' entire agreement in writing.

3. As a result, Janis J. Elmer is subject to discipline pursuant to Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Janis J. Elmer (license # 94-53845) is hereby REPRIMANDED.

IT IS FURTHER ORDERED that:

2. Respondent Janis J. Elmer shall pay COSTS in the amount of ONE THOUSAND DOLLARS (\$1,000.00) within 120 days of the date of this Order.

3. Payment shall be made by **certified check or money order**, payable to the Wisconsin Department of Regulation and Licensing and sent 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

4. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare 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 fail to timely submit any payment as ordered, then the Respondent's license **SHALL BE SUSPENDED** without further notice or hearing until Respondent has complied with the terms of this Order.

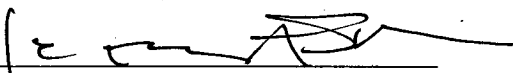
5. This Order is effective on the date of its signing.

IT IS FURTHER ORDERED that file 04 REB 306 is hereby closed.

Dated this 4 day of Dec, 2008.

WISCONSIN REAL ESTATE BOARD

By:


Peter A. Sveum, Chair

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF
DISCIPLINARY PROCEEDINGS AGAINST

JANIS J. ELMER,
RESPONDENT

:
:
:
:
:

STIPULATION

LS 08120417REB

Division of Enforcement Case File # 04 REB 306

It is hereby stipulated between Janis J. Elmer, Respondent, and Lara Herman, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation by the Division of Enforcement. The Respondent consents to the resolution of this investigation by Stipulation and without the issuance of a formal complaint.

2. The Respondent understands that by signing this Stipulation she voluntarily and knowingly waives her rights, including:

- the right to a hearing on the allegations against her, at which time the state has the burden of proving those allegations by a preponderance of the evidence;
- the right to confront and cross-examine the witnesses against her;
- the right to call witnesses on her behalf and to compel their attendance by subpoena;
- the right to testify on her own behalf;
- the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision;
- the right to petition for rehearing; and
- all other applicable rights afforded under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and other provisions of state or federal law.

3. The Respondent has been provided the opportunity to obtain legal counsel prior to signing this Stipulation.


4. The Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Board (Board). The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. The Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall then be returned to the Division of Enforcement for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by the consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. The Respondent is informed that should the Board adopt this Stipulation, the Board's Final Decision and Order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins the Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.


Janis J. Elmer, Respondent
3691 T-Bird Way
Cottage Grove, WI 53527

11/18/08
Date


Lara M. Herman, Attorney
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

11/18/08
Date

[Case # 04 REB 306; Janis J. Elmer - Reprimand and \$1,000 Costs]

STATE OF WISCONSIN

CIRCUIT COURT

State of Wisconsin

County of Dane

This document is a full, true, and correct copy of the original as the same is on file and of record in my office and has been compared by me

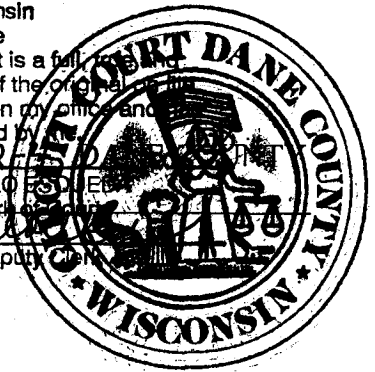
Attest

CARLO E. SIEG

Clerk of Court

By

Deputy Clerk



STATE OF WISCONSIN,

Plaintiff,

v.

Case No. 06CF2211

JANIS ELMER,

Race/Gender: W/F

D.O.B. 12/6/1963

3691 T-Bird Way

Cottage Grove, Wisconsin 53527,

Defendant.

CRIMINAL COMPLAINT

2006 SEP 22 AM 9:47
CIRCUIT COURT
DANE COUNTY, WI

I, Timothy J. Schultz, a Special Agent with the Wisconsin Department of Justice, Division of Criminal Investigation, being first duly sworn, state upon information and belief that:

COUNT ONE: THEFT BY EMPLOYEE

On or about December 14, 1999, in the City of Madison, in Dane County, Wisconsin, the defendant, by virtue of her employment with the Wisconsin Chiropractic Association, and having possession and custody of a negotiable instrument of the Wisconsin Chiropractic Association, namely a check payable to "Elmer Management" in the amount of \$10,014.13, did intentionally use, transfer, conceal, and retain possession of such negotiable instrument without the consent of the Wisconsin Chiropractic Association, contrary to the defendant's authority, and with intent to convert the negotiable instrument to her own use, contrary to section 943.20(1)(b) of the Wisconsin Statutes.

Upon conviction for this offense, a Class C felony (under the 1997-1998 version of the Wisconsin Statutes), the maximum possible penalty is a term of imprisonment not to exceed ten (10) years, or a fine not to exceed \$10,000, or both.

COUNT TWO: THEFT BY EMPLOYEE

On or about December 20, 1999, in the City of Madison, in Dane County, Wisconsin, the defendant, by virtue of her employment with the Wisconsin Chiropractic Association, and having possession and custody of a negotiable instrument of the Wisconsin Chiropractic Association, namely a check payable to "Elmer Management" in the amount of \$9,514.67, did intentionally use, transfer, conceal, and retain possession of such negotiable instrument without the consent of

STATE'S
EXHIBIT

B

the Wisconsin Chiropractic Association, contrary to the defendant's authority, and with intent to convert the negotiable instrument to her own use, contrary to section 943.20(1)(b) of the Wisconsin Statutes.

Upon conviction for this offense, a Class C felony (under the 1997-1998 version of the Wisconsin Statutes), the maximum possible penalty is a term of imprisonment not to exceed ten (10) years, or a fine not to exceed \$10,000, or both.

COUNT THREE: THEFT BY EMPLOYEE

On or about January 21, 2000, in the City of Madison, in Dane County, Wisconsin, the defendant, by virtue of her employment with the Wisconsin Chiropractic Association, and having possession and custody of a negotiable instrument of the Wisconsin Chiropractic Association, namely a check payable to "Elmer Management" in the amount of \$3,000, did intentionally use, transfer, conceal, and retain possession of such negotiable instrument without the consent of the Wisconsin Chiropractic Association, contrary to the defendant's authority, and with intent to convert the negotiable instrument to her own use, contrary to section 943.20(1)(b) of the Wisconsin Statutes.

Upon conviction for this offense, a Class C felony (under the 1999-2000 version of the Wisconsin Statutes), the maximum possible penalty is a term of imprisonment not to exceed fifteen (15) years, or a fine not to exceed \$10,000, or both.

FACTUAL BASIS

1. I am a Special Agent with the Wisconsin Department of Justice ("DOJ"), Division of Criminal Investigation. I have been so employed since 1976.

2. This affidavit is made for the limited purpose of establishing probable cause in support of this complaint, and therefore contains only a summary of certain relevant facts. I have not included each and every fact known to me concerning the entities, individuals and events described in this affidavit.

3. I have reviewed an affidavit executed on March 14, 2006, by Russell Leonard, the Executive Director of the Wisconsin Chiropractic Association ("WCA"). The statements in that affidavit should be deemed reliable because they were made by an ordinary citizen under penalty of perjury. In that affidavit, among other things, Leonard stated the following:

a. From approximately March 1993 until approximately February 2000, the defendant worked as the Financial Services Manager for the WCA in Madison, Wisconsin.

b. During her employment by the WCA, the defendant misappropriated funds for her own personal benefit without the consent of the WCA and contrary to her authority as a WCA employee. These misappropriations included checks drawn on WCA bank accounts, which the defendant caused to be written to herself personally or to her

management company, Elmer Management. The misappropriated checks included, but were not limited to, the following:

i. WCA check no. 4268 in the amount of \$10,014.13, dated December 14, 1999, made payable to "Elmer Management," and signed by the defendant;

ii. WCA check no. 027041 in the amount of \$9,514.67, dated December 20, 1999, made payable to "Elmer Management," and signed by the defendant; and

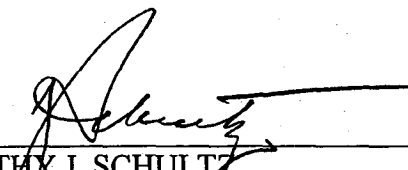
iii. WCA check no. 027393 in the amount of \$3,000, dated January 21, 2000, made payable to "Elmer Management," and signed by the defendant.

c. The WCA did not consent to the defendant writing these checks to Elmer Management, and the defendant was not authorized by the WCA to write these checks to Elmer Management.

4. During the course of this investigation, the Wisconsin Department of Justice served a document subpoena on the bank where the defendant maintained her accounts, Anchor Bank in Madison. The records produced in response to that subpoena are reliable because they were business records kept in the ordinary course of business. Those records show that the three checks referenced above were deposited into the bank account at Anchor Bank that the defendant maintained for the property management company she operated, Elmer Management.

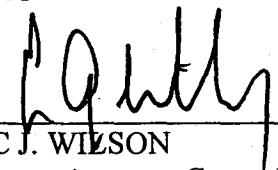
WHEREFORE, your complainant prays that the defendant be dealt with according to law.

Dated this 18th day of September, 2006.



TIMOTHY J. SCHULTZ
Special Agent
Wisconsin Department of Justice
Division of Criminal Investigation

Subscribed and sworn to before me,
and approved for filing, this 18th day of September, 2006.



ERIC J. WILSON
Assistant Attorney General
Wisconsin Department of Justice
Special Prosecutor, Dane County
State Bar No. 1047241
17 West Main Street, Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-8986

State of Wisconsin vs. Janis Elmer

Judgment of ConvictionSentence Withheld, Probation
Ordered

Date of Birth: 12-06-1963

Case No.: 2006CF002211

State of Wisconsin
County of Dane
This document is a full and
correct copy of the original
and of record in my office
been compared by me.

Attest

By

Deputy Clerk

The defendant was found guilty of the following crime(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
2	Theft-Business Setting >\$2500	943.20(1)(b)	Guilty	Felony C	12-20-1999 on or about		05-07-2007

IT IS ADJUDGED that the defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Concurrent with/Consecutive to/Comments	Agency
2	09-24-2007	Probation, sent withheld	4 YR		Department of Corrections

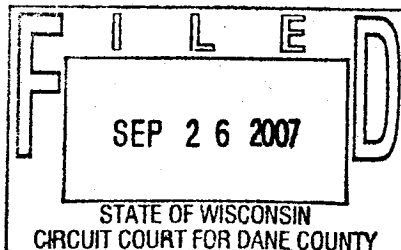
Conditions of Sentence or Probation**Obligations:** (Total amounts only)

Fine	Court Costs	Attorney Fees	Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge
	20.00			5.00	70.00		

Conditions:

Ct.	Condition	Length	Agency/Program	Begin Date	Begin Time	Comments
2	Jail time	6 MO	Dane County Jail	11-23-2007	07:00 am	With Huber. After serving 30 days, def shall be placed on EMP.

Ct.	Condition	Agency/Program	Comments
2	Costs		\$95 paid in full.
2	Employment / School		Maintain full time employment/education or combination thereof or be seeking same. If def is employed in the capacity of writing checks or receipt of money, def to notify principle of that company of this conviction and abide by any audit required and pay for any costs involved in audit.
2	Alcohol treatment		AODA and treatment as recommended.
2	Drug treatment		AODA and treatment as recommended.
2	Prohibitions		Def is not to act as fiduciary or representative without consent of Dept of Regulations and Licensing and her agent. Not to have trust account in own name and not to act as bailee or trustee of funds for others.
2	Other		Def to file federal & state tax returns annually with copy to agent. Defendant advised of requirement to provide DNA sample - surcharge waived. Any other conditions DOC, Probation/Parole Department may impose.

**IT IS ADJUDGED** that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes