

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



Wisconsin Department of Regulation & Licensing Access to the Public Records of the Reports of Decisions

This Reports of Decisions document was retrieved from the Wisconsin Department of Regulation & Licensing website. These records are open to public view under Wisconsin's Open Records law, sections 19.31-19.39 Wisconsin Statutes.

Please read this agreement prior to viewing the Decision:

- The Reports of Decisions is designed to contain copies of all orders issued by credentialing authorities within the Department of Regulation and Licensing from November, 1998 to the present. In addition, many but not all orders for the time period between 1977 and November, 1998 are posted. Not all orders issued by a credentialing authority constitute a formal disciplinary action.
- Reports of Decisions contains information as it exists at a specific point in time in the Department of Regulation and Licensing data base. Because this data base changes constantly, the Department is not responsible for subsequent entries that update, correct or delete data. The Department is not responsible for notifying prior requesters of updates, modifications, corrections or deletions. All users have the responsibility to determine whether information obtained from this site is still accurate, current and complete.
- There may be discrepancies between the online copies and the original document. Original documents should be consulted as the definitive representation of the order's content. Copies of original orders may be obtained by mailing requests to the Department of Regulation and Licensing, PO Box 8935, Madison, WI 53708-8935. The Department charges copying fees. *All requests must cite the case number, the date of the order, and respondent's name as it appears on the order.*
- Reported decisions may have an appeal pending, and discipline may be stayed during the appeal. Information about the current status of a credential issued by the Department of Regulation and Licensing is shown on the Department's Web Site under "License Lookup." The status of an appeal may be found on court access websites at: <http://ccap.courts.state.wi.us/InternetCourtAccess> and <http://www.courts.state.wi.us/wscqa>.
- Records not open to public inspection by statute are not contained on this website.

By viewing this document, you have read the above and agree to the use of the Reports of Decisions subject to the above terms, and that you understand the limitations of this on-line database.

Correcting information on the DRL website: An individual who believes that information on the website is inaccurate may contact the webmaster at web@drl.state.wi.gov

FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
RICHARD L. FRICKER,	:	87 REB 380
RESPONDENT.	:	

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

Richard L. Fricker
7167 West Burleigh Street
Milwaukee, Wisconsin 53219

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 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 adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Richard L. Fricker ("Fricker"), 7167 West Burleigh Street, Milwaukee, Wisconsin, 53219, is and was at all times relevant to the facts set forth herein a real estate broker licensed to practice in the State of the Wisconsin pursuant to license #30224, originally granted on April 25, 1975.

2. At all times relevant to the facts set forth herein Fricker was affiliated with Fricker Realty, Inc., ("Fricker Realty"), 7167 West Burleigh Street, Milwaukee, Wisconsin, a real estate corporation licensed to practice in the State of Wisconsin pursuant to license #8573, originally granted on June 29, 1973.

3. Carolyn Perkins ("Perkins"), whose current address is 4475 West Dean, Apartment #211, Brown Deer, Wisconsin 53223, was at all times relevant to the facts set forth herein a real estate broker licensed to practice in the State of Wisconsin pursuant to license #33944, originally granted on March 6, 1985. The Wisconsin Real Estate Board accepted the voluntary surrender of Perkins real estate brokers license by Order dated August 27, 1992.

4. At all times relevant to the facts set forth herein, Perkins was affiliated with Wauwatosa Realty Co. ("Wauwatosa"), 11622 West North Avenue, Wauwatosa, Wisconsin, a real estate corporation licensed to practice in the State of Wisconsin pursuant to license #7771, originally granted on July 11, 1950.

5. On or about May 16, 1986, Alan Corre and Nita Corre ("Corres"), entered into a listing contract with Fricker Realty granting Fricker Realty the exclusive right to sell a single family residence located at 3309 North 45th Street, Milwaukee, Wisconsin ("property"), during the period from May 17, 1986 to September 17, 1986.

6. Fricker drafted the Corres' listing contract with Fricker Realty.

7. As exceptions to the warranties and representations concerning structural or mechanical defects of material significance in the property, Fricker indicated "none" in the Corres' listing contract at line #20.

8. At Fricker's request, Alan Corre signed a "Seller's Real Estate Condition Report" dated June 20, 1986, wherein it was stated, in part:

(a) The fireplace leaked in heavy rain;

(b) The shower leaked into the basement;

(c) The property had been subject to a flood; and

(d) The question as to whether the property had been subject to a sewer back-up had been left unanswered.

9. During 1975 the property was subject to a sewer back-up that flooded the basement of the property.

10. On or about July 13, 1986, Clarence Jones ("Jones") and his mother, Jacqueline Jones attended an open house conducted by Fricker to market the Corres' property.

11. Subsequent to the open house, Jones contacted Perkins for the purpose of having Perkins draft an offer to purchase on the property on behalf of Jones.

12. On or about July 15, 1986, Perkins contacted Fricker for the purpose of asking if he would "co-broke" a commission with her and Wauwatosa.

13. During the July 15, 1986 contact with Perkins, Fricker indicated that Wauwatosa and Perkins were not entitled to a commission because Fricker had the first contact with Jones at the open house and was the "procuring cause" of any purchase by Jones of the Corres' property.

14. On or about July 17, 1986, Perkins contacted Fricker and again requested Fricker to enter into a co-broke agreement and Fricker agreed to enter into the co-broke agreement but Fricker intended, at the time, that he would dispute dividing a commission with Wauwatosa and/or Perkins at the closing of any transaction between Jones and the Corres.

15. On or about July 17, 1986 Fricker signed a co-broke agreement with Wauwatosa wherein he agreed to divide a portion of the commission Fricker Realty expected to earn on the sale of the Corres' residence to Jones.

16. On or about July 19, 1986, Perkins prepared a Residential Offer To Purchase Contract on behalf of Jones, wherein Jones offered to purchase the Corres' property for the sum of \$57,500. The Jones offer provided, in part the following:

(a) A provision requiring the Corres' to complete a Wauwatosa Realty seller's condition report; and

(b) A statement that Jones relied on the warranties and representations of the Corres' contained in the offer and on a "Seller's Real Estate Condition Report" a copy of which was stated as being attached to the offer; and

(c) A statement that the Corres' were unaware of any structural, mechanical or other defects of material significance in the property.

17. On addendum "A" to the offer, the alternative of having an inspection of the property as a contingency for the performance of the purchase of the property was deleted.

18. No seller's condition report was attached to the offer or provided to Jones prior to his making the offer.

19. Fricker presented the Jones' offer to the Corres on or about July 19, 1986.

20. At the time Fricker presented the Jones' offer to the Corres, the Corres signed the acceptance of the offer and indicated to Fricker that they would accept the Jones' offer, except that the offer should be modified so as to provide that the rear back room light fixture and certain bookcases were not to be included in the sale.

21. Fricker failed to prepare a counter-offer on an approved real estate form to reflect the Corres' disagreement with the Jones' offer and, instead, Fricker modified the terms of the Jones' offer by writing on the original offer, without the approval and consent of Jones, the following: "providing rear back bedroom light fixture not included and the book case is not included."

22. The fact that there was a leak in the fireplace on the property was a material fact and adverse factor relating to the property.

23. The fact that there was a leak in the shower into the basement of the property was a material fact and adverse factor relating to the property.

24. The fact that flooding had occurred in the basement of the property was a material fact and adverse factor relating to the property.

25. At no time did Fricker disclose to Perkins or Jones the material and adverse facts of leakage into the fireplace, leakage from the shower into the basement and flooding or sewer back-up of the basement.

26. Fricker knew, or had reason to know, that Perkins never inspected the property prior to or after the drafting of the offer.

27. Neither a Wauwatosa condition report nor the Fricker property condition report were provided to Jones prior to the closing of the transaction.

28. The apparent intent of requiring the Wauwatosa condition report to be a part of the offer was to condition the purchase of the property upon receipt by Jones of a completed and acceptable property condition report and Fricker failed to clarify the purpose and absence from the offer of that report.

29. Perkins and Fricker failed to retain a complete and accurate copy of the Wauwatosa seller's condition report which was purportedly attached to and part of the offer for the required three year time period.

30. On August 4, 1986, subsequent to the acceptance of the offer and prior to the closing of the transaction, the sewer on the property backed up due to heavy rains in the area and this sewer back up caused sewage to flow into the basement of the property.

31. On or about August 13, 1986, Fricker became aware of the August 4, 1986 flooding of the property.

32. At no time prior to the September 22, 1986 closing in the Corres to Jones transaction did Fricker disclose to Perkins, or to Jones, the August 4, 1986 sewer back-up and flooding of the property.

33. At or near the time of the closing of the transaction between Corres and Jones, Fricker informed Perkins, in writing, that she and Wauwatosa Realty would not be receiving any commission as a result of the transaction.

34. Subsequent to closing, Jones discovered the following defects in the property: holes in the interior wall and damage to wood moldings where the shelving mentioned in the modified offer had been removed by the Corres; roof leaks over the kitchen and near the chimney; water leakage near the basement windows; water leakage in the first floor shower; one electric space heater that did not function properly; one gas wall space heater that did not function and that had been red-tagged by the gas company; the main furnace was approximately 40 years old and in poor condition; the air conditioning unit for the home did not function properly, the garbage disposal did not function; and wood damage from insects in the area of the back porch, all requiring repair in a sum in excess of \$6,800.00.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to section 452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to section 227.44(5), Wis. Stats.

3. Respondent Richard L. Fricker has violated:

a. Sections 452.14(3)(i) and (m), Wis. Stats., and Sections RL 16.04(1) and 24.08, Wis. Adm. Code, by modifying the purchase contract between the sellers and the buyer in an unapproved manner and without the use of an approved form and by failing to set forth in writing all commitments regarding the transaction regarding condition reports and regarding removal of fixtures such as attached shelving and by failing to assure that the contract documents expressed the exact agreement of the parties.

b. Section 452.14(3)(i), Wis. Stats., and Section RL 15.04, Wis. Adm. Code, by failing to retain a complete and accurate copy of the Offer which included the Wauwatosa Realty Seller's Real Estate Condition Report attached thereto, for the required three year period.

c. Section 452.14(3)(i) and (b), Wis. Stats., and Sections RL 24.025, 24.03(2)(b) and (c), 24.07(1) by concealing from or misrepresenting material and adverse facts and factors regarding the property to Jones in the transaction between the Corres and Jones, all to the damage of Jones.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that Respondent Richard L. Fricker, license #30224, is REPRIMANDED.

IT IS FURTHER ORDERED, that Respondent Richard L. Fricker, within six months of the date of this Order, successfully complete the following course modules from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The five (5) hour Consumer Protection module; and
- b. The four (4) hour Business Ethics for real estate brokers module,

and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. 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.

IT IS FURTHER ORDERED, that Respondent Richard L. Fricker pay the partial costs of these proceedings in the amount of \$400.00 within thirty (30) days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

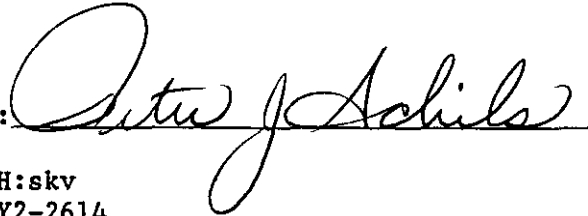
IT IS FURTHER ORDERED, that in the event Respondent Richard L. Fricker fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above, or fails to pay the partial costs as set forth above, then his real estate broker's license shall be suspended, without further notice or hearing, until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that investigative file 87 REB 380 be, and hereby is closed.

Dated this 29TH day of OCTOBER, 1992.

WISCONSIN REAL ESTATE BOARD

By:



CJH:skv
ATY2-2614

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :

RICHARD L. FRICKER, :
RESPONDENT. :

STIPULATION
87 REB 380

The parties in this matter agree and stipulate as follows:

1. This formal disciplinary case is currently set for hearing before Administrative Law Judge Wayne R. Austin, on December 14, 1992. This Stipulation is entered into for the purpose of resolving this disciplinary action without hearing and pursuant to the terms of this Stipulation and attached Final Decision and Order. Respondent Richard L. Fricker consents to the resolution of this investigation by this Stipulation and without hearing.

2. Respondent understands that by the signing of this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; 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 to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent has had the opportunity to consult with legal counsel regarding this matter and has consulted with legal counsel regarding his legal rights and the legal implications of this Stipulation. Respondent, however, is not currently represented by an attorney in this proceeding.

4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

5. With respect to the attached Final Decision and Order, Respondent neither admits nor denies the facts as set forth in the Findings of Fact however, he agrees that the Board may make the Findings of Fact and may reach the Conclusions set forth in the Conclusions of Law and may enter the Order of Reprimand, require education and impose partial costs as set forth in the Order.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Administrative Law Judge 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.

7. If the Board accepts the terms of this Stipulation, 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.

8. Respondent agrees that Complainant's attorney, Charles J. Howden, may appear at any deliberative meeting of the Board with respect to the Stipulation but that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives his right to have notice of that hearing and to be present at the meeting of the Board.


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




Richard L. Fricker, Respondent



Date



Charles J. Howden, Attorney
Division of Enforcement



Date

CJH:skv
ATY2-2617
10/08/92

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review,
the times allowed 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 October 30, 1992.