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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

HAROLD C. PETERSON

RESPONDENT.

FINAL DECISION AND ORDER

99 REB 081

LS0007274REB

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

*Harold C. Peterson
2565 Saint Pats Dr.
Green Bay, WI 54313*

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

*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. **Harold C. Peterson** ("Peterson"), date of birth 4/11/46, is licensed in the State of Wisconsin as a real estate broker having license # 90-30839. This license was first granted to him on 12/21/72. Peterson's most recent address on file with the Department of Regulation and Licensing is, 2565 Saint Pats Dr., Green Bay, WI 54313
2. At all times relevant to the facts set forth below Peterson was a real estate broker/employee of, Coldwell Banker The Real Estate Group, Inc., 2920 S. Webster Ave. Green Bay, WI 54301.
3. On or about July 12, 1998, Todd and Mitchell Cullen entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Peterson for the sale of their property located at 340 Traders Point Lane, Green Bay, WI. The listing price was \$186,500.00. Terms of the contract set forth on lines 55 and 56 indicate that the contract was to expire on October 1, 1998. A copy of the Residential Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 1** and is incorporated herein by reference.
4. On or about July 12, 1998, as agent for Buyer, real estate licensee James La Plant of Realty Executives, Green Bay, WI., drafted a Residential Offer to Purchase on behalf of Guy and Robin Wilkerson for the 340 Traders Point Lane property. The offered price was \$186,000.00 with closing to occur no later than September 30, 1998. Earnest money of \$1,500.00 was to be paid within 7 days of acceptance. Lines 23 and 24 state; "Time Is Of The Essence as to: (1) Earnest money payment(s); (2) binding acceptance; (3) occupancy; (4) date of closing and all other dates and deadlines in this Offer except: "No Exceptions" was hand written in the blank following the word "except". Lines 241 and 242 read: "Sale Of Buyer's Property Contingency: This Offer is contingent upon the

sale and closing of Buyer's property located at 45 N. Mondel Dr., Gilbert, AZ 85233, no later than 9-30-98". The Cullen's accepted this Offer on July 13, 1998. A copy of the July 12, 1998, Residential Offer to Purchase and acceptance is attached as **Exhibit 2** and is incorporated herein by reference.

5. Realizing that their Arizona home would not close by September 30, 1998, the Wilkersons, on September 16, 1998, requested La Plant to draft an Amendment to Offer to Purchase changing the Sale Of Buyer's Property Contingency date from September 30, 1998, to October 23, 1998. Lines 29 and 30 of the amendment read: "This Amendment is binding upon Seller and Buyer only if a copy of the accepted Amendment is delivered to the Party proposing the Amendment on or before 9-18-98, (Time is of the Essence)". The Cullens did not sign this Amendment until September 20, 1998, 2 days past the acceptance date. The Cullens claim Peterson had told them he had a verbal understanding with La Plant and the Wilkerson that they would extend the amendment acceptance and delivery date to September 20, 1998. Respondent claims that he explained to the Cullens when he delivered the Amendment that they needed to sign it by September 18, 1998. Again on September 18, 1998, Respondent urged the Cullens to sign the Amendment immediately. He explained to them that while La Plant had verbally agreed to extend the time for signing the Amendment he had nothing in writing to confirm that. The Cullens nevertheless made the decision to not sign the Amendment until they found a place to live. The signed agreement was not faxed back to La Plant until September 21, 1998. A copy of the Fax Cover Sheet dated September 21, 1998, from Peterson to La Plant is attached as **Exhibit 3** and is incorporated herein by reference. A copy of the Amendment to Offer to Purchase is attached as **Exhibit 4** and is incorporated herein by reference.

6. La Plant and the Wilkersons contend that they did not agree to extend the acceptance date from September 18th to September 20th and as of September 19th they considered the original offer null and void. The transaction failed to close and the Wilkersons purchased another home. By agreement the Cullens retained the \$1,500.00 earnest money although the Wilkersons denied any liability (paragraph 10 below).

7. On or about September 30, 1998, an Amendment To Listing Contract, drafted by Peterson and signed by Mr. Cullen extended the listing through November 1, 1998, and reduced the list price from \$186,500.00 to \$182,500.00. Lines 10 - 12 state; "Listing agent agrees to pay up to \$3,000.00 of sellers loss of net proceeds, as if the offer dated 7/12/98 would have closed on 9/30/98". A copy of the Amendment To Listing Contract is attached as **Exhibit 5** and is incorporated herein by reference.

8. On or about October 29, 1998, Peterson drafted an Amendment To Listing Contract changing the expiration date of the Listing Contract from November 1, 1998, to January 1, 1999. An unsigned copy of the Amendment To Listing Contract is attached as **Exhibit 6** and is incorporated herein by reference.

9. On or about November 2, 1998, an Amendment To Listing Contract, drafted by Peterson and signed by Mr. Cullen, reduced the list price from \$182,500.00 to \$179,900.00. A copy of the Amendment To Listing Contract dated November 2, 1998, is attached as **Exhibit 7** and is incorporated herein by reference.

10. On or about November 24, 1998, a Cancellation Agreement and Mutual Release was entered into by the Wilkersons and the Cullens, whereby the Cullens were able to retain the \$1,500.00 earnest money and the contract was formally canceled (Exhibit 2). A copy of the Cancellation Agreement and Mutual Release Contract is attached as **Exhibit 8** and is incorporated herein by reference.

11. On or about December 1, 1998, an Amendment To Listing Contract, drafted by Peterson and signed by Mr. Cullen, reduced the list price from \$179,900.00 to \$174,900.00. A copy of the Amendment To Listing Contract dated December 1, 1998, is attached as **Exhibit 9** and is incorporated herein by reference.

12. Peterson was unable to sell the Cullen's property and the listing agreement was allowed to expire. The Cullens eventually sold their home through another realtor for \$17,500.00 less than what the Wilkersons offered.

CONCLUSIONS OF LAW

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

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

3. Respondent **Harold C. Peterson** has violated:

a. Wis. Adm. Code sec. RL 24.08 and Wis. Stats. sec. 452.14(3)(i) by failing to reduce to writing any verbal extension of time from the Wilkersons for the Cullens to sign the Amendment to Offer to Purchase (Exhibit 4).

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Harold C. Peterson**, license #90-30839, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Harold C. Peterson**, within six months of the date of this Order, successfully complete the following course modules from the 36 hour pre-licensing real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The Contracts module-section RL 25.02(2)(a), of the Wisconsin Administrative Code.
- b. The Business Ethics module-section RL 25.02(2)(g), of the Wisconsin Administration Code.

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, WI 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 in the event Respondent **Harold C. Peterson** fails to successfully complete the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Harold C. Peterson**, his real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **Harold C. Peterson**, pay partial costs of this matter in the amount of \$250.00, within 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 **Harold C. Peterson** fails to pay the \$250.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Harold C. Peterson**, his real estate broker's license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said partial costs have been paid to the Department of Regulation and Licensing and his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 99 REB 081 be, and hereby is, closed.

Dated this 15th day of July, 2000.

WISCONSIN REAL ESTATE BOARD

By: James Imhoff

A member of the Board