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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

**DAIRYLAND REALTY INC., and DUANE R.
WEPFER,**

RESPONDENTS

FINAL DECISION AND ORDER

LS0008241REB

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

Duane R. Wepfer

419 North 4th Street

Abbotsford, WI 54405

Dairyland Realty, Inc.

418 North 4th Street

Abbotsford, WI 54405

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. Duane R. Wepfer (Wepfer), date of birth 06/11/1954, is licensed in the State of Wisconsin as a real estate broker having license number 90-33176. This license was first granted to him on October 15, 1984. Wepfer's most recent address on file with the Department of Regulation and Licensing is 419 North 4th Street, Abbotsford, WI 54405.

2. Dairyland Realty, Inc., (Dairyland) is licensed as a real estate corporation having State of Wisconsin license number 91-26086. This license was first granted to it on September 14, 1981. Dairyland's most recent address on file with the Department of Regulation and Licensing is 418 North 4th Street, Abbotsford, WI 54405.

3. Wepfer is the President of Dairyland.
4. At all times relevant hereto, Wepfer was the supervising broker of real estate sales person William O. Oestreich, license number 35573. Oestreich's real estate license was suspended by the Real Estate Board pursuant to the July 27, 2000 Final Decision and Order in case LS 0007273 REB.
5. This investigation involves the failure of Wepfer to appropriately supervise the activities of Oestreich in relation to Dairyland's listing of two farm properties. The first was a 160 acre farm owned by Jay Hoppenworth and Christine Hoppenworth. The second was a farm owned by Richard M. Newlun and LuAnn K. Newlun.
6. The Hoppenworths, through marketing efforts of Dairyland, agreed to exchange their property for the property owned by the Newluns. The Hoppenworth property was valued at \$265,000.00 and the Newlun property was valued at \$285,000.00 for purposes of this exchange.
7. The total commission due Dairyland from this trade transaction, according to the terms of the listing contracts with the Hoppenworths and the Newluns, was \$32,800.00.
8. A copy of the two page closing statement for this exchange transaction is attached hereto as **Exhibit A**, and is incorporated herein by this reference. This closing statement shows Dairyland as receiving a total commission at closing of \$14,250.00.
9. At the time and place of closing, Oestreich appeared as the representative of Dairyland. Wepfer did not attend the closing.
10. At the closing, Dairyland received as its actual commission on the Sauk property \$11,564.14 rather than the \$14,250.00 shown on the closing statement. Neither Oestreich nor Wepfer drafted a document to reflect the actual commission paid at closing or the agreement as to payment of the balance of the commission. Wepfer acknowledges to the Division of Enforcement that immediately after closing he became aware of Dairyland's failure to receive the total commission.
11. At the time of closing, Oestreich entered into a verbal agreement with Hoppenworth that included Oestreich taking possession of a farm tractor valued at \$19,500.00 as payment of the balance of commission share due to Oestreich. Oestreich verbally agreed to pay back to Hoppenworth approximately \$4,000.00.
12. Nothing was placed into writing by Oestreich regarding this agreement to change the commission agreement between Dairyland and Hoppenworth.
13. Wepfer represents to the Division of Enforcement that Oestreich did not immediately reveal the tractor/commission arrangement to Dairyland or his supervisor Wepfer.
14. Shortly after the closing, Oestreich sold the tractor to a farmer named Foley with an agreement that Foley would make five annual payments to Oestreich of \$5,000.00 each.
15. Upon not receiving any of the promised payment from Oestreich, Hoppenworth took the tractor back by pretending to rent it from Foley.
16. As a consequence of Hoppenworth taking the tractor from Foley, Hoppenworth was questioned by the Clark County Sheriff's Department regarding an alleged theft of the tractor. As a consequence of that allegation and the apparent violations of real estate law by Oestreich, the District Attorney for Clark County referred the Sheriff's investigative reports to the Division of Enforcement.
17. Investigation by the Division of Enforcement found that at no time relevant hereto did Wepfer appropriately investigate the failure of Dairyland to receive its full commission from the Newluns or the Hoppenworths.
18. During the course of the Newlun/Hoppenworth transaction, Oestreich drafted a document dated February 27, 1997 called "Addendum A", a copy of which is attached hereto as **Exhibit B**, and made a part of this document by this reference. The terms of this addendum are ambiguous and uncertain and have led to litigation between the parties to this transaction as well as litigation against Dairyland and Oestreich. Wepfer never reviewed documents drafted by Oestreich in this trade transaction, even though he was the only supervisor of Oestreich.
19. Another of the agreements between the Newluns and the Hoppenworths involved the early occupancy of the Wien farm by the Newluns, including the use of farm buildings for the farm business operated by Newluns. Oestreich failed to place any of the terms of this early occupancy into writing. This early occupancy resulted in disputes between the parties relating to the condition of the Wien property and the early use of the property. Wepfer states to the Division of Enforcement that he never met with either the Newluns or the Hoppenworths regarding the terms of the trade transaction and that he left the matter entirely in Oestreich's hands.

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 Duane R. Wepfer, license 90-33176, has violated:

Sections RL 17.08(1) and 17.08(2) of the Wisconsin Administrative Code and sections 452.12(3)(a) and 452.14(3)(i) of the Wisconsin Statutes by failing to appropriately supervise the real estate activities of a William O. Oestreich, a real estate salesperson under his supervision.

4. Respondent Dairyland Realty Inc., license 91-26086, is subject to discipline pursuant to section 452.14(4) of the Wisconsin Statutes.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **DUANE R. WEPFER**, within six months of the date of this Order, successfully complete the 36 hour BROKER'S PRE-LICENSE PROGRAM described in Section RL 25.02(2) of the Wisconsin Administrative Code at an educational institution approved by the Department of Regulation and Licensing, 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 **DUANE R. WEPFER** 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 **DUANE R. WEPFER**, 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, **DAIRYLAND REALTY INC.**, license #91-26086 pay a **FORFEITURE of One Thousand Dollars (\$1,000.00)**, within thirty days of the date of this Order. Payment of this forfeiture shall be made payable to the Wisconsin Department of Regulation and Licensing and mailed or delivered to the Department at PO Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event **DAIRYLAND REALTY INC.**, fails to pay the \$1,000.00 forfeiture within the time and in the manner as set forth above, its real estate broker's license shall be immediately suspended, without further notice, hearing or Order of the Board, and said suspension shall continue until the full amount of said forfeiture have been paid to the Department of Regulation and Licensing, and its failure to pay the forfeiture shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that Respondent **DAIRYLAND REALTY INC.**, pay partial **COSTS of Six Hundred Dollars (\$600.00)**, 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 **DAIRYLAND REALTY INC.**, fails to pay the \$600.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **DAIRYLAND REALTY INC.**, its real estate 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 costs have been paid to the Department of Regulation and Licensing and its failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that investigative file 98 REB 164 be, and hereby is, closed.

WISCONSIN REAL ESTATE BOARD

By: Richard Hinsman

August 24th, 2000

A member of the Board

Date

