

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

STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

DARRELL G. HARDING,

RESPONDENT

FINAL DECISION AND ORDER

LS0102221REB

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

Darrell G. Harding

1625 Oak Grove Rd.

Brookfield, WI 53005

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. **Darrell G. Harding** ("Harding"), date of birth 1/25/49, is licensed in the State of Wisconsin as a real estate salesperson having license # 94-35957. This license was first granted to him on 8/20/91.
2. Harding's most recent address on file with the Department of Regulation and Licensing is 1625 Oak Grove Rd., Brookfield, WI 53005. At all times relevant to the facts set forth in this Complaint, Harding was a real estate salesperson for Realty Executives d.b.a. BSTV Inc., located at, 3235 N. 124th St., Brookfield, WI 53005.
3. Best Properties Inc. was at all times relevant to the facts set forth herein a business entity solely owned and operated by Harding and his partner Julius Kaulfuerst who were its principals. Julius Kaulfuerst was at all times relevant to the facts set forth in this Complaint a real estate broker license # 90-7555, and he was also employed by Realty Executives d.b.a. BSTV Inc, in Brookfield WI.
4. Sometime prior to June 24, 1993, Elizabeth Hintz agreed to market her property through real estate firm Sileno Company Inc., 5429 N. 188th Ct., Milwaukee, WI. The property for sale consisted of two apartment buildings located at 9629 – 9705 West Hampton Ave., Milwaukee, WI. A Fact Sheet as prepared by Jeffrey Mueller, a Sileno Company Inc. licensed employee and listing agent for the property, shows the asking price for the property as \$1,500,000.00. A copy of the Jeffrey Mueller Fact Sheet is attached as **Exhibit 1** and is incorporated herein

by reference.

5. Sometime prior to June 24, 1993, Harding became aware of the Hintz property being for sale. He discussed this property with Kaulfuerst who indicated that he had a real estate client, Dr. Parmod Kumar, who might be willing to purchase the apartment buildings if he could use some of his existing property in trade. At the time, Kaulfuerst was the listing agent for two properties that Dr. Kumar was trying to sell or trade. One of the properties was in Fort Atkinson, WI. and the other in Muskego, WI.

6. On or about June 24, 1993, Dr. Kumar submitted an Offer To Exchange Property With Acceptance for the Hintz property as drafted by Harding and/or Kaulfuerst. The property offered for exchange by Kumar was the property he had previously listed with Kaulfuerst. Lines 103 – 113 of the Offer To Exchange Property With Acceptance read as follows:

First Party Exchanges The Following Property.

- 1) A Residential / Commercial Building located at 1160118 N. Main St. Fort Atkinson, WI. subject to an existing mortgage in an amount not to exceed \$115,000.00 which the second party agrees to assume and or pay. (see attached)
- 2) A note for \$156,000.00 at 7% amortized 15 years.
- 3) A Residential Home located at S 74 W13180 Courtland Lane, Muskego, WI subject to an existing mortgage in an amount not to exceed \$215,000.00 which the second party agrees to assume and or pay. (see attached)
- 4) \$1,275,000.00 cash at closing.

Lines 119 – 121 read: Second Party Exchanges The Following Property,

- 1) Two 24 Unit Buildings located at 9629 – 9705 West Hampton, Milwaukee, WI. free and clear of all encumbrances.

This offer was never accepted by Ms. Hintz as she was not interested in a property exchange. A copy of the Offer To Exchange Property With Acceptance is attached as **Exhibit 2** and is incorporated herein by reference.

7. On or about July 21, 1993, Patrick Carl, Harding's brother-in-law, who does not hold a real estate license, submitted a Commercial Offer To Purchase for the Hintz property. The offered price was \$1,375,000.00 with earnest money of \$1000.00 in the form of a check to be paid within 3 days of acceptance and Closing to be no later than August 30, 1993. The Commercial Offer to Purchase was drafted for Mr. Carl by Harding with line 2 of the form indicating that Harding was acting as agent of the Seller, Ms. Hintz. The fact that Patrick Carl is Harding's brother-in-law, was not disclosed in the offer. Carl was at all times relevant to this offer financially incapable of consummating the transaction. Rather, the principals behind his offer were Harding and Kaulfuerst. Attached to the Commercial Offer To Purchase was Addendum Form A specifying financing contingencies and a Second Mortgage Rider To Offer To Purchase in the amount of \$200,000.00. A copy of the July 21, 1993, Commercial Offer to Purchase with Addendum Form A and Second Mortgage Rider To Offer To Purchase is attached as **Exhibit 3** and is incorporated herein by reference.

8. On or about August 20, 1993, Ms. Hintz countered Carl's offer (Exhibit 3) with a purchase price of \$1,400,000.00; \$1,250,000.00 cash at closing, and a second mortgage from seller to be in the amount of \$150,000.00 with monthly payments of not less than \$1,245.66. This Counter Offer was presented to Carl by Harding, purportedly still acting as an agent for the seller, on August 22, 1993, and accepted by Carl the same day. A copy of Ms. Hintz's Counter-Offer is attached as **Exhibit 4** and is incorporated herein by reference.

9. On August 20, 1993, two days prior to his acceptance of the Hintz Counter Offer, Carl entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Harding for the sale of the 9629 – 9705 West Hampton Ave., Milwaukee, WI. property. The listing price was \$1,700,000.00. Line 62 of the listing indicates that the broker's commission was to be \$20,000.00. Based on this listing, Harding prepared a Fact Sheet for the property for marketing purposes. The Fact Sheet contains the exact same information as the Fact Sheet prepared by Jeffrey Mueller (Exhibit 1) except that the price now is \$1,700,000.00 rather than \$1,500,000.00. A copy of the Residential Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 5** and is incorporated herein by reference. A copy of the Fact Sheet as prepared by Harding is attached as **Exhibit 6** and is incorporated herein by reference.

10. On or about August 20, 1993, Carl, purporting to be the owner of the West Hampton Ave. property, countered the Offer To Exchange Property With Acceptance (Exhibit 2) that Dr. Kumar originally submitted to Ms. Hintz. Harding drafted this Counter Offer. This Counter-Offer was presented to Dr. Kumar on August 21, 1993, by Kaulfuerst and was accepted by Kumar the same day, still one day before Carl accepted the Hintz Counter-Offer (Exhibit 4). A copy of the August 20, 1993, Counter-Offer is attached as **Exhibit 7** and is incorporated herein by reference.

11. On or about August 26, 1993, Harding completed a Verification Of Deposit in the amount of \$1,000.00 indicating receipt of the \$1,000.00 earnest money as set forth in Carl's Commercial Offer To Purchase to Hintz (Exhibit 3). Carl did not provide this \$1,000.00 in earnest money. A copy of the Verification Of Deposit is attached as **Exhibit 8** and is incorporated herein by reference.

12. By the terms of the Carl Commercial Offer To Purchase (Exhibit 3-Addendum to Offer To Purchase) Carl was to furnish Seller with a written commitment of the loan within 20 days of the acceptance of the offer. Carl, who Harding used solely as a strawman for the purposes of this transaction, never even attempted to obtain financing so as to comply with this requirement as he was financially insolvent as to this transaction. Ms. Hintz was not informed of this fact.

13. On or about October 4, 1993, an Amendment To Contract of Sale was signed by Carl changing the closing date of the Hintz Offer to Purchase from September 30, 1993, to October 20, 1993, or before. The Amendment also waived the financing contingency subject to an acceptable environmental report. Ms. Hintz signed this amendment on October 5, 1993. A copy of the Amendment to Contract of Sale is attached as **Exhibit 9** and is incorporated herein by reference.

14. The closing of the Hintz/Carl transaction occurred the morning of October 15, 1993. No money exchanged hands at this closing but Hintz was not made aware that this closing was a sham and that Carl was not a legitimate buyer. A portion of a settlement document titled "Brokers Settlement With Seller" indicates that Sileno Companies Inc. earned \$42,000.00 as commissions for this transaction while Realty Executives earned \$28,000.00. A copy of the Settlement Statement is attached as **Exhibit 10** and is incorporated herein by reference.

15. On or about October 15, 1993, Harding prepared an amendment to the Residential Listing Exclusive Right To Sell agreement he held with Carl (Exhibit 5). Lines 9 through 14 of the Amendment read as follows: " Commission shall be in the form of two notes in an amount of \$32,615.00 each and any equity in the exchange properties. Properties shall be subject to mortgages and conveyed by means of Land Contract. Brokers shall be responsible for all expenses, insurance etc. from time of closing. Any profit shall be considered commissions. " The Amendment was signed by Carl on or about October 15, 1993. By agreement between Harding and Kaulfuerst they were to share equally in all commissions, notes and profits earned from the Hintz to Carl and the Carl to Kumar transactions. A copy of the Amendment to Listing Contract is attached as **Exhibit 11** and is incorporated herein by reference.

16. The closing of the Carl/Kumar transaction took place the afternoon of October 15, 1993. The Buyer's Settlement Statement indicates the sale price at \$1,750,000.00, or \$350,000.00 more than the selling price in the Hintz to Carl transaction that had already taken place earlier the same day. The "Broker's Settlement with Seller" portion of the closing document shows the Sileno Co. Inc. commission as \$41,000.00, and Realty Executives (Harding and Kaulfurest) commission as \$28,000.00. The closing statement also shows a "Net Balance To Be Paid To Seller" of \$15,264.41. A copy of the closing document for the Carl to Kumar transaction is attached as **Exhibit 12** and is incorporated herein by reference.

17. On or about October 15, 1993, Fixed Rate Mortgage Notes #1 and #2 were signed by Dr. Kumar, each promising to pay Patrick Carl or assigns \$32,615.00. That same day Carl assigned his interest in the Mortgage Notes over to Harding and Kaulfuerst as partial payment of commissions (Exhibit 11). A copy of Fixed Rate Mortgage Notes #1 is attached as **Exhibit 13** and is incorporated herein by reference. A copy of Fixed Rate Mortgage Notes #2 is attached as **Exhibit 14** and is incorporated herein by reference.

18. On or about October 15, 1993, Dr. Kumar transferred the two properties used in trade in the Carl to Kumar transaction by Land Contract directly to Best Properties, Inc. Harding and Kaulfuerst were principals of Best Properties, Inc. and these properties were subsequently sold by Best Properties Inc. A copy of the Land Contract for the property located in Muskego, WI. is attached as **Exhibit 15** and is incorporated herein by reference. A copy of the Land Contract for the property located in Fort Atkinson, WI. is attached as **Exhibit 16** and is incorporated herein by reference.

19. On or about October 15, 1993, Badger Bank completed a Loan Settlement Statement for Doctor and Mrs. Kumar, again showing commission owed to Sileno Co. Inc. as \$41,000.00 and \$28,000.00 owed to Realty Executives. Per agreement, Harding and Kaulfuerst split the \$ 28,000.00 commission owed to Realty Executives. A copy of the Loan Settlement Statement is attached as **Exhibit 17** and is incorporated herein by reference.

20. On October 15, 1993, Ms. Hintz believed that Dr. Kumar was purchasing her property, and that Carl was "setting in" for him. Ms. Hintz was unaware that Carl was a strawman financially incapable of purchasing the Hampton property and that no exchange of money would occur. Kumar likewise believed the he was purchasing directly from Ms. Hintz and was unaware that Carl had purchased the Hampton property the same day as a strawman for Harding and Kaulfuerst but for \$350,000.00 (face value) less then he paid.

21. Carl was paid approximately \$15,000.00 by Harding and Kualfurerst for his role as strawman in the October 15, 1993, Hintz/Carl and Carl/Kumar transactions.

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 **Darrell G. Harding** has violated:

a. Section RL 18.10 of the Wisconsin Administration Code and section 452.14(3)(i) of the Wisconsin Statutes by, on or about August 26, 1993, commingling \$1,000.00 of his personal funds or funds received from one other than Patrick Carl, into the Realty Executives trust account (Exhibit 8).

b. Sections RL 24.025 (1993 rule), RL 24.03(2)(b), RL 24.05(1), RL24.05(2), RL 24.05(4) and RL 24.07(2) of the Wisconsin Administration Code and sections 452.14(3)(i) and 452.14(3)(k) of the Wisconsin Statutes by being a principal rather than an agent, yet receiving compensation as an agent, in the two October 15, 1993, real estate transactions involving the property at 9629-9670 West Hampton Ave., Milwaukee, WI, without Elizabeth Hintz's or Parmod Kumar's written consent or knowledge, and by failing to disclose to them that Patrick Carl was a strawman who was insolvent as to this transaction.

c. Section RL 24.03(2)(b) of the Wisconsin Administrative Code and sections 452.14(3)(i), 452.14(3)(j), 452.14(3)(L) and 452.19 of the Wisconsin Statutes by paying Patrick Carl, his unlicensed brother-in-law, approximately \$15,000.00 to act as a strawman in the Hintz/Carl, and Carl/Kumar October 15, 1993, real estate transactions involving the property at 9629-9670 West Hampton Ave., Milwaukee, WI.

ORDER

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

IT IS FURTHER ORDERED, that **Darrell G. Harding's**, license to practice as a real estate salesperson in Wisconsin (license No. 94-35957) be, and hereby is, **SUSPENDED** for a period of six months, commencing on the effective date of this Order.

IT IS FURTHER ORDERED, that Respondent **Darrell G. Harding**, pay **PARTIAL COSTS** in this matter in the amount of a \$1,000.00, within six months 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 **Darrell G. Harding** fails to pay the \$1,000.00 partial costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Darrell G. Harding**, his real estate license shall be suspended indefinitely without further hearing and without further Order of the Board, and said suspension shall continue indefinitely until the full amount of said partial costs have been paid to the Department of Regulation and Licensing and his failure to pay the partial costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that Respondent **Darrell G. Harding**, pay a **FORFEITURE** in the amount of \$500.00, within six months 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 **Darrell G. Harding** fails to pay the \$500.00 forfeiture within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent **Darrell G. Harding**, his real estate license shall be suspended indefinitely without further hearing and without further Order of the Board, and said suspension shall continue indefinitely until the full amount of forfeiture has been paid to the Department of Regulation and Licensing and his failure to pay the forfeiture shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 96 REB 052 be, and hereby is, closed as to **Darrell G. Harding**.

Dated this 22nd day of February, 2000.

James Imhoff, Jr.

A member of the Board