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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

JULIUS O, KAULFUERST

RESPONDENT

FINAL DECISION AND ORDER

LS0106282REB

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

Julius O. Kaulfuerst

W212N10388 Oak Court

Colgate, WI 53017

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. **Julius O. Kaulfuerst** ("Kaulfuerst"), date of birth 3/12/42, is licensed in the State of Wisconsin as a real estate broker having license # 90-7555. This license was first granted to him on 4/18/73.
2. Kaulfuerst's most recent address on file with the Department of Regulation and Licensing is W212N10388 Oak Court, Colgate, WI 53017. At all times relevant to the facts set forth in this Stipulation, Kaulfuerst was a real estate broker 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 originally set up by Darrell Harding and subsequently owned and operated by Kaulfuerst and Harding. Darrell Harding was at all times relevant to the facts set forth in this Stipulation a real estate salesperson license # 94-35957 and he also was 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 Hinz property being for sale. When Harding first discussed the property with Kaulfuerst, Harding told Kaulfuerst that he had the Hintz property (Village Square Apartments) under contract with a client. Harding did not tell Kaulfuerst that this "client" was Harding's brother-in-law. Kaulfuerst did not know that Harding did not actually have an accepted offer on the Village Square Apartments. During this conversation Harding suggested to Kaulfuerst that Harding's client would be willing to sell the Village Square Apartments to Dr. Kumar, and to take his properties in trade. Harding suggested that Kaulfuerst call Dr. Kumar to see if he would be interested, which he did. Dr. Kumar said that he was interested 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, Wisconsin and the other in Muskego, Wisconsin. Kaulfuerst was under the impression that Harding's client was a bona fide buyer and that his client would purchase the Village Square Apartments regardless of whether Dr. Kumar went forward with the transaction.

6. On or about June 24, 1993, Dr. Parmod Kumar submitted an Offer To Exchange Property With Acceptance for the Village Square Apartments. At the time Kaulfuerst believed that this offer was to be submitted to Harding's "client". This document was drafted by Harding with the necessary information concerning the proposed transaction being provided by Kaulfuerst on behalf of his client, Kumar. 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.

Without Kaulfuerst's knowledge the Offer to Exchange Property With Acceptance involving the Kumar properties was submitted by Harding to Ms. Hintz. This offer was not accepted by Ms. Hintz. A copy of the Offer To Exchange Property With Acceptance is attached as **Exhibit 2** and is incorporated herein by reference.

7. Prior to July 21, 1993, Kaulfuerst was told by Harding that he had a client under contract to purchase the Village square Apartments. At that time Kaulfuerst did not know the identity of Harding's client or any other details about said client. Kaulfuerst had yet no reason to believe that Harding's client would not be able to conclude the real estate transaction.

8. On or about July 21, 1993, Patrick Carl 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 is acting as agent of the Seller, Ms. Hintz. Patrick Carl is Harding's brother-in-law, which is not disclosed in the offer, and Carl was at all times relevant to this offer financially incapable of consummating the transaction. The principal in this transaction was at all times Harding. Kaulfuerst subsequently (prior to closing) became aware of Carl's relationship to Harding and the fact he was insolvent. 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 document is attached as **Exhibit 3** and is incorporated herein by reference.

9. 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.

10. 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 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.

11. 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 submitted to Harding for his "client". At the time Kaulfuerst was unaware of the Kumar offer being submitted directly to Ms. Hintz, and was unaware of any negotiations involving the Hintz/Carl transaction. Harding drafted this Counter-Offer on behalf of Carl. 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.

12. By the terms of the Carl Commercial Offer To Purchase (Exhibit 3 Addendum to Offer To Purchase) Carl was to furnish Hintz with a written commitment of the loan within 20 days of the acceptance of the offer. Carl, who was 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. 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/Carl transaction 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 8** 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 as Carl was insolvent as to this transaction. Hintz was unaware 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 commission for this transaction while Realty Executives (Kaulfuerst and Harding) earned \$28,000.00. A copy of the Settlement Statement is attached as **Exhibit 9** 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. Subsequent to August 20, 1993, Harding and Kaulfuerst had an agreement that 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 10** 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 as \$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 that 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 (Kaulfuerst and Harding) 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 Settlement Statement for the Carl to Kumar transaction is attached as **Exhibit 11** 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 Kaulfuerst and Harding as partial payment of commission (Exhibit 10). A copy of Fixed Rate Mortgage Notes #1 is attached as **Exhibit 12** and is incorporated herein by reference. A copy of Fixed Rate Mortgage Notes #2 is attached as **Exhibit 13** 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. Kaulfuerst and Harding were sole principals of Best Properties, Inc. and these properties were subsequently sold by Best Properties Inc. and any profits retained by Kaulfuerst and Harding. A copy of the Land Contract for the property located in Muskego, WI. is attached as **Exhibit 14** and is incorporated herein by reference. A copy of the Land Contract for the property located in Fort Atkinson, WI. is attached as **Exhibit 15** 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 16** and is incorporated herein by reference.

20. 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 Kaulfuerst and Harding but for \$350,000.00 less then he paid.

21 Carl was paid approximately \$15,000.00 by Harding 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 **Julius O. Kaulfuerst** has violated:

a. Sections RL 24.025 (1993 rule), RL 24.03(2)(b), RL 25.05(1), RL 24.05(2) and RL 24.05(4) of the Wisconsin Administrative Code and sections 452.14 (3)(b) 452.14 (3)(d), 452.14 (3)(i), 452.14(3)(k), of the Wisconsin Statutes by being a principal rather than an agent, yet receiving compensations as an agent, in the two October 15, 1993, real estate transactions involving the property at 9629-9670 West Hampton Ave. Milwaukee WI without the knowledge and/or written consent of Elizabeth Hintz or Parmod Kumar, and by failing to disclose to them that Patrick Carl was a strawman who was insolvent as to this transaction.

ORDER

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

IT IS FURTHER ORDERED, that **Julius O. Kaulfuerst's**, license to practice as a real estate broker in Wisconsin (license No. 90-7555) be, and hereby is, **SUSPENDED** for a period of two months, commencing on the effective date of this Order.

IT IS FURTHER ORDERED, that Respondent **Julius O. Kaulfuerst**, 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 Business Ethics module-section RL 25.02(2)(g), of the Wisconsin Administrative Code and,
- b. The Consumer Protection module-section RL 25.02(2)(h), of the Wisconsin Administrative 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 **Julius O. Kaulfuerst** 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 Julius O. Kaulfuerst, 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 **Julius O. Kaulfuerst**, pay **PARTIAL COSTS** in this matter in the amount of a \$1000.00, within 6 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 **Julius O. Kaulfuerst** fails to pay the \$1000.00 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 **Julius O. Kaulfuerst**, his 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 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 **Julius O. Kaulfuerst**, pay a **FORFEITURE** in the amount of \$500.00, within 6 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 **Julius O. Kaulfuerst** 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 **Julius O. Kaulfuerst**, his 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 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 Julius O. Kaulfuerst.

Dated this 28th day of June, 2001.

WISCONSIN REAL ESTATE BOARD

James Imhoff, Jr.

A member of the Board