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IN RE: DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
BARBARA A. NYSTROM, and :
NYSTROM ENTERPRISES, INC., :
Respondents. : LS0208225REB

DOE Investigative File 00 REB 008

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Wisconsin Real Estate Board (hereinafter "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:

FINDINGS OF FACT

1. The Respondent **Barbara A. Nystrom** (D.O.B. 7/25/54) is a licensed real estate broker, having license number 90-49525, granted on September 4, 1998. Respondent's latest known business address on file with the Department of Regulation and Licensing is 9130 184th Avenue NW, Elk River, Minnesota 55330.

2. Barbara Nystrom owns and operates Nystrom Enterprises, Inc., a licensed real estate business entity having license number 91-835163, granted on September 4, 1998. The latest known address for Nystrom Enterprises, Inc., on file with the Department of Regulation and Licensing is 9130 184th Avenue NW, Elk River, Minnesota 55330.

3. Beginning on or about 1998, Nystrom entered into a joint venture agreement with Stanley Evavold whereby she agreed to pay him a finder's fee or commission of 25% of the proceeds from any listings that Evavold referred to her.

4. Evavold was a former licensed auctioneer in the State of Wisconsin who surrendered his license on December 11, 2000, for misuse of auction proceeds and unlicensed practice. At all times relevant Evavold did not have a real estate broker or real estate salesperson license in Wisconsin or any other state.

5. Evavold would refer his auction customers to Nystrom, if they had real property to sell in an estate. Among the referrals made by Evavold to Nystrom for a commission was the property of the Moretto family and the property of Roy Modrich.

6. Nystrom entered into a Residential Listing Contract (Form WB-1) with Victor and Julie Moretto on May 15, 1999, as a result of a referral from Evavold. Nystrom paid a finder's fee or commission to Evavold for the Moretto listing. A true and correct copy of the Moretto W-B2 Farm Listing Contract is attached and incorporated herein as **State's Exhibit 1**

7. Nystrom entered into a Residential Listing Contract (Form WB-1) with Roy Modrich on April 2, 1999, as a result of a referral from Evavold. Nystrom paid a finder's fee or commission to Evavold for the Modrich listing. A true and correct copy of the Modrich WB-1 Residential Listing Contract is attached and incorporated herein as **State's Exhibit 2.**

8. Evavold maintained that Nystrom owed him other commissions for his referrals of listings on 804 26th Street, Superior, Wisconsin and for parcels of land located in Iron River, Wisconsin. A true and correct copy of the letter from Evavold regarding his commissions is attached and incorporated herein as **State's Exhibit 3.**

Modrich Listing

10. Roy Modrich inherited an older home located at 2076 State Street, Oliver, Wisconsin. Modrich is a resident of the State of Minnesota and had never lived in the Wisconsin property.

11. Modrich asked Nystrom for assistance in making the property sellable. Nystrom told Modrich that certain repairs would have to be done in order to sell the property in Wisconsin. Modrich authorized Nystrom to get bids so that the necessary repairs could be made.

12. Nystrom presented one bid proposal to Modrich for the cleaning, painting and minor repairs of the property by B.A. Nystrom, Inc., a construction company owned by Nystrom and her husband. Modrich accepted Nystrom's proposal. A true and correct copy of the B.A. Nystrom proposal is attached and incorporated herein as **State's Exhibit 4.**

13. On June 11, 1999, Nystrom showed the Modrich property to Lois Roubinek, a first-time homebuyer who was pre-qualified for a loan from the USDA Guaranteed Rural Housing Loan Program.

14. Nystrom persuaded Roubinek to sign a Buyer's Agency Agreement and Disclosure of Multiple Representation at the first showing. A true and correct copy of the Buyer's Agency Agreement is attached and incorporated herein as **State's Exhibit 5.**

15. Roubinek told Nystrom the amount of loan for which she had been pre-qualified. Nystrom immediately prepared an Offer to Purchase on behalf of Roubinek consistent with Roubinek's loan amount. A true and correct copy of Roubinek's WB-1 Residential Offer to Purchase is attached and incorporated herein as **State's Exhibit 6.**

16. Under the terms of the USDA Rural Housing Program, Roubinek was required to have the property inspected. Nystrom recommended that Roubinek hire Assured Home Inspections, a company located at 1918 Iowa Avenue, Superior, Wisconsin.

17. On June 23, 1999, Assured Home Inspections, Inc. performed a home inspection of the Modrich property for Roubinek. The inspection report identified a number of defects in the electrical system, including open splices in the ceiling not in covered box, old knob and tubes and improper wiring under the suspended ceiling. A true and correct copy of the Assured Home Inspections report is attached and incorporated herein as **State's Exhibit 7.**

18. On July 6, 1999, Nystrom submitted a copy of the Assured Home Inspection, Inc., report to the USDA Rural Housing Program. Nystrom indicated in her letter that the sellers were taking care of the electrical and plumbing problems. A true and correct copy of Nystrom's letter is attached and incorporated herein as **State's Exhibit 8.**

19. Shortly thereafter Nystrom contacted Bergstrom Electric for an estimate of the electrical repairs to the Modrich property. Nystrom provided a copy of the inspection report by Assured Inspections, Inc., to Charles E. Bergstrom, the owner of the Bergstrom Electric before he went to the property. Bergstrom found that the house did not have 60-ampere, 120/240-volt electrical service and that the electrical wiring needed to be upgraded to code compliant service. Bergstrom's findings were set forth in his job estimate, which he gave to Nystrom. A true and correct copy of Bergstrom's July 9, 1999 job estimate is attached and incorporated herein as **State's Exhibit 9.**

20. The USDA Rural Housing Loan Program informed Nystrom that the home inspection by Assured Inspections Inc., was unacceptable because the company was not on the agency's approved list of inspectors.

21. On July 26, 1999, Nystrom hired Jacobson Inspections, South Range, Wisconsin, to perform a second inspection of the property. The inspection report from Jacobson Inspections noted that the property only had 60-ampere fuse type main panel and needed GFC outlets in kitchen and bath exteriors. A true and correct copy of the Jacobson Inspections report is attached and incorporated herein as **State's Exhibit 10.**

22. Nystrom Enterprises Inc., Realty submitted the Jacobson report to the USDA on July 26, 1999, indicating that most of the repairs had been completed. A true and correct copy of Nystrom's fax is attached and incorporated herein as **State's Exhibit 11.**

23. On July 29, 1999, Nystrom contacted Belknap Electric, Inc., to obtain bids on the electrical repairs to the Modrich property. Rollie Larson, the President of Belknap Electric, Inc., was given a dollar amount by Nystrom and told that he could only work up to that amount. The cost of the repairs, which Nystrom approved, was \$915.00. A true and correct copy of the invoice for services from Belknap is attached and incorporated herein as **State's Exhibit 12.**

24. Belknap Electric sent electrician, Brian Green, to the Modrich to perform the necessary approved repairs. Green was again told by Nystrom to correct only the visible part of the wiring problems in the basement and garage and not to bring the house up to code. Green found numerous problems with the electrical system and reported his findings to the estimator at Belknap Electric.

25. The estimator prepared a "House Needs List" for Nystrom and verification that Green had

completed the re-wiring in the garage and basement as Nystrom had approved. The information sent from Belknap to Nystrom indicated that the house was not brought up to code compliant standards.

26. The "House Needs List" specifically noted that a 100-ampere panel with circuit breakers was needed, that two circuits were required for the kitchen, that a 20-ampere circuit was required for the dining room, and that ground fault circuit breakers were required for the kitchen and bathroom areas.

27. The "House Needs List" and statement from electrician Green was faxed to Nystrom on August 2, 1999. A true and copy of the information provided to Nystrom by Belknap is attached and incorporated herein as **State's Exhibit 13**

28. Nystrom did not provide a copy of the estimates from Belknap Electric, Inc., or Bergstrom Electric to Roubinek. Roubinek did not know that there were unresolved defects in the electrical system or that additional electrical work was required to bring the property into compliance with building and safety codes.

29. Roubinek closed on the property in November 1999. Shortly after closing, Roubinek was notified by her insurance agent that the homeowner's policy would be canceled because the house did not appear to have 60 ampere service. A true and correct copy of the underwriters memo is attached and incorporated herein as **State's Exhibit 14**.

30. Roubinek told her insurance agent that she was told the electrical system had been repaired by the sellers and brought up to code. The agent contacted Nystrom and she also told him that the house had 60-ampere service.

31. The insurance company underwriter stated that they would decline issuance of the homeowner's policy the house was required to have 100-ampere electrical service. A true and correct copy of memo from the insurance agent is attached and incorporated herein as **State's Exhibit 15**.

32. The USDA Property Suitability Guidelines for Rural Development Financing of Existing Homes require 100-ampere as a minimum for a dwelling of 1,000 square feet or more. A 60-ampere service may be adequate for homes with less than 1000 square feet of living area, provided certification from an electrician is obtained indicating that the 60-ampere service and wiring is adequate and in compliance with current electrical codes. A true and correct copy of the USDA guidelines is attached and incorporated herein as **State's Exhibit 16**.

33. The Residential Data Input Form prepared by Nystrom and signed by Roy Modrich on April 2, 1999 indicates that the house had an approximate total square footage of 1,155. A true and correct copy of the data form is attached and incorporated herein as **State's Exhibit 17**.

34. The Uniform Residential Appraisal Report prepared by Ray Perala indicates that the Modrich house had a total 1,200 square feet. A true and correct copy of the appraisal report is attached and incorporated herein as **State's Exhibit 18**.

Klobuchar Transaction

35. On May 1, 1999, Brian and Susan Klobuchar offered to purchase a farm property consisting of an older home and eight acres land owned by Nystrom. A true and correct copy of the WB-12 Farm Offer to Purchase is attached and incorporated herein as **State's Exhibit 19**.

36. The Klobuchars were relocating to the Superior area and were looking for a home with acreage suitable for horses.

37. Nystrom had three farms listed in the price range and with the features that the Klobuchars were seeking. Nystrom only showed her property to the Klobuchars and told them no other properties with similar features were available.

38. Nystrom had listed her property with Nystrom Enterprises Inc., for \$118, 900. Nystrom had owned and lived on the property since 1991. A true and correct copy of the WB-2 Farm Listing Contract is attached and incorporated herein as **State's Exhibit 20**.

39. Nystrom told the Klobuchars that since it was her property, she knew everything about the property and there was no need for an inspection.

40. The Klobuchars requested clarification regarding water stains on the ceiling in the main bedroom. Nystrom told the Klobuchars that there had been a minor problem, but a new roof was put on the house in 1991, which corrected the leakage.

41. The Property Condition Report prepared by Nystrom for the house was checked "no" in the column addressing defects in the roof. Nystrom added an explanatory statement to the report indicating that "ice build up had occurred and cause a leakage in bedroom with fast warm up. Problem fixed." A true and correct copy of the Property Condition Report is attached and incorporated herein as **State's Exhibit 21**.

42. Shortly after moving into the property, the roof started to leak and Brian Klobuchar went up to the roof to check on the leakage. While checking the roof, Klobuchar fell through a hole in the roof that had been covered by shingles. A roofing contractor, Johnson Siding and Construction Company, was called to inspect the roof and found that there was no plywood or support structure, ice shield or step flashing over the hole in the roof. The shingles were stapled together to conceal and cover the hole.

43. The Klobuchars had to put an entire new roof on the house. Nystrom agreed to pay for half of the cost of the new roof but insisted the billings be made to the real estate company rather than her.

44. In the listing for the property, Nystrom described the kitchen as newly remodeled. After the Klobuchars moved into the house, they discovered a large torn off section in the kitchen linoleum by the back door. An area rug was tacked over and concealed the damaged area.

45. Since the ground was covered with snow at the time that the Klobuchars looked at the property, they asked Nystrom whether the acreage had adequate drainage and was suitable for horses. Nystrom indicated that there was no problem with the ground or soils on the property or in the barn.

46. Nystrom told the Klobuchars that all of the acreage was good quality pastureland. After moving into the property and the snow melted, the Klobuchars discovered that there were natural springs in the pastures and under the pole barn. Most of the pastures and several of the stalls in the barn were subject to continual flooding and wet conditions.

47. The Klobuchars spoke to Nystrom's son who indicated that they always had problems with flooding on the property. The Klobuchars were informed that they would need to install drain tiles to resolve the drainage problems. Some areas of the barn and pastures are too wet for the horses to use.

48. The Property Condition Report prepared by Nystrom for the farm land was checked "no" in the column addressing defects in the property such as soils or drainage. A true and correct copy of the Property Condition Report is attached and incorporated herein as **State's Exhibit 22**.

49. After the Klobuchars moved into the property, the Douglas County Assessor stopped by and asked when the Klobuchars had built the pole barn. The Klobuchars explained that the pole barn was built by the previous owner, Nystrom, and was on the property at the time of their purchase. The Assessor informed the Klobuchars that a building permit had never been issued to Nystrom for the pole barn and the improvement was not part of the property tax assessment.

50. At the time that Nystrom showed the property to the Klobuchars, she told them that the farthest exterior fence was their property line. After moving into the property, the neighbor informed the Klobuchars that the fence was on his property. The neighbor indicated that the land had been surveyed and Nystrom knew that the fence was on his property. The neighbor showed Klobuchar the survey map to verify the lot lines.

51. The Klobuchar offered to purchase Nystrom's property for \$112,500.00, contingent upon loan approval from the Veterans Administration. The offer included the appliances and window coverings.

52. Nystrom's property did not appraise for the amount of Nystrom's asking price. The Veterans Administration appraisal was for between \$80,000 and \$90,000. Nystrom was unwilling to sell the property for the appraised value and had the property re-appraised. The second appraisal valued the property at \$100,000.

53. Nystrom was unwilling to sell the property at the appraised value and told the Klobuchars that they had to pay her an additional \$3,000.00 above the appraised value. Nystrom told the Klobuchars to make a check in the amount of \$3,000.00 payable to Barb Nystrom, but not to write anything in the memo line regarding the purpose of the payment. A true and correct copy of the amended offer and closing statement is attached and incorporated herein as **State's Exhibit 23**.

54. Nystrom did not amend the Offer to Purchase to reflect the actual higher purchase price or the additional funds paid by the Klobuchars to Nystrom for the property. A true and correct copy of the Klobuchar's check to Nystrom is attached and incorporated herein as **State's Exhibit 24**.

55. After purchasing the property, Nystrom offered Susan Klobuchar a job as the office receptionist. Nystrom was only present in the Superior office for a couple of days per week. Klobuchar was usually the only person in the office and was expected to handle contacts with prospective buyers and sellers.

56. Nystrom told Klobuchar that as a part of her duties, she was expected to show properties to prospective buyers when Nystrom was unavailable. Klobuchar was given the access code to open property lock boxes.

57. Nystrom instructed Klobuchar that a prospective buyer had to sign a Buyer's Agency agreement before they could be shown any properties or obtain any information regarding any MLS properties or listing materials in the office. Klobuchar did not know the buyer would be obligated to pay a commission to Nystrom if

they purchased any property during the buyer agency period.

58. Nystrom routinely left signed blank copies of real estate documents with Klobuchar for use in Nystrom's absence. A true and correct copy of a pre-signed Buyer's Agency Agreement as **State's Exhibit 25**.

59. Nystrom indicated in Klobuchar's 30-day employee evaluation that it was the office policy to accept funds from persons who did not have an agency agreement for drafting documents. "If someone wants something drafted that we do not have a client relationship on, the company should receive from that customer monetary amounts." A true and correct copy of Klobuchar's evaluation is attached and incorporated herein as **State's Exhibit 26**.

Zybtowski Transaction

60. While Klobuchar worked for Nystrom, the office had a listing for vacant land owned by Marguerite Zybtowski. A buyer from Colorado inquired whether there were any bids on the Zybtowski property. The buyer came to Wisconsin over the weekend and made an offer.

61. The following Monday morning, Klobuchar found the buyer's offer on her desk with a note from Nystrom stating that the offer was rejected. Klobuchar asked Nystrom why the offer had been rejected. Nystrom told Klobuchar that the seller had accepted another offer. Klobuchar asked whether the Colorado buyer had a chance to make a counter offer.

62. Nystrom told Klobuchar that she had purchased the land and did not have to take any further offers. Nystrom's offer was for \$2,000.00 more than the Colorado offer.

63. The Nystrom purchase of the property closed quickly in about one week before any other offers could be received.

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 Barbara A. Nystrom has violated:

a). Sec. 452.19 Wis. Stats., by paying a fee or a commission or any part thereof for a referral fee or finder's fee to any person who is not licensed or registered under this chapter or who is not regularly and lawfully engaged in the real estate brokerage business.

- b). Sec. 452.133(1)(c) Wis. Stats., and sec. RL 24.07(2) by failing to disclose in writing to each party all material adverse facts that the broker knows and that the party does not know or cannot discover through reasonably diligent observation.
- c). Sec. 452.14(3)(b) Wis. Stats., and RL 24.07 (2) by misrepresenting facts in reference to a transaction injurious to the seller and purchaser.
- d). Sec. RL 24.03(2)(c) Wis. Adm. Code by failing to be knowledgeable regarding laws, public policies and current market conditions to assist and guide the buying and selling public based upon these factors.
- e). Sec. RL 17.03(2) and RL 17.07, Wis. Adm. Code by employing an unlicensed person to engage in real estate practice for the broker-employer.
- f). Sec. RL 24.13(3)(b) Wis. Adm. Code by submitting her own offer to purchase a property having knowledge of the existence of any pending offer.
- g). Sec. RL 24.025(2) by offering to provide brokerage services without an agency agreement or agreement authorizing those services.
- h). Sec. RL 24.03(2)(b) by failing to protect the public against fraud, misrepresentation, and unethical practices.
- i). Sec. 452.14(3)(i) by demonstrating incompetency to act as a broker, salesperson or time-share salesperson in a manner which safeguards the interests of the public.

ORDER

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

IT IS FURTHER ORDERED, that the Voluntary Surrender of the Real Estate Broker's license of Respondent, Barbara A. Nystrom (lic. 90-49525), is accepted.

IT IS FURTHER ORDERED, that the Voluntary Surrender of the Real Estate business license of Respondent, Nystrom Enterprises, Inc., (lic.#91-835163), is accepted.

IT IS FURTHER ORDERED, that all rights and privileges heretofore granted to Respondent Barbara A. Nystrom (lic.#90-49525) and Respondent Nystrom Enterprises, Inc., (lic.#91-835163), are forever terminated effective at 11:59 p.m. on the date of the Order.

IT IS FURTHER ORDERED, that at no time following the date of this Order, shall Barbara A. Nystrom, or any entity owned or controlled in part by her, be granted a credential under Chapter 452 of the Wisconsin Statutes. The denial, in whole or in part, of any petition or license application of Barbara A. Nystrom for a

credential authorized under Chapter 452 of the Wisconsin Statutes shall not constitute a denial of a license and shall not give rise to a contested case within the meaning of sections 227.01(3) and 227.42 of the Wisconsin Statutes.

IT IS FURTHER ORDERED, that Division of Enforcement files **00 REB 008** be, and hereby are, closed.

WISCONSIN REAL ESTATE BOARD

By: James Imhoff, Jr.

8-22-02

A Member of the Board

Date