

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 DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
KIMBERLY K. MOORE, :
RESPONDENT. : LS0702222REB

Division of Enforcement Case File # 05 REB 168

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

Kimberly K. Moore
1818 Grand Ave.
Wausau, WI 54403

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. **Kimberly K. Moore** is a licensed real estate salesperson in the State of Wisconsin, license # 94-48998, first granted on 07/22/98. Ms. Moore's most recent address on file with the Department of Regulation and Licensing is 1818 Grand Ave., Wausau, WI 54403.
2. At all times relevant to the facts set forth below, Ms. Moore was working as a real estate agent for First Webe Group Northern Wisconsin LLC., located at 5250 E. Terrace Dr., Madison, WI 53718.
3. On or about September 28, 2004, Ms. Moore entered into a Residential Listing Contract-Exclusive Right To Sell agreement with the Milron Group for the sale of their property located at 1183 Avanti Dr., Mosinee, WI. The list price was \$159,900.00. This property was a new construction.
4. On February 25, 2005, Ms. Moore drafted a Residential Offer To Purchase for Paul Kraft to purchase the 1183 Avanti Dr. property. The offered price was \$170,000.00. Lines 180-187 reads: "Additional Provisions/Contingencies. Seller to include garage – 24 X 30. This offer is contingent upon exclusion to covenants... Approval of garage will be done within 10 days from acceptance". Through various counters and amendments, the deadline for obtaining the amendment for the property's covenants became March 18, 2005.
5. On or about March 6, 2005, Mr. Kraft's fiancée put her house on the market, with a different agent and different company, and received an offer that same day. She countered the offer making the sale contingent on the amendment

of the covenants on the Avanti Dr. property.

6. Per the seller's direction, and with a list of names provided by the seller, Ms. Moore assisted the seller by obtaining signatures of all the persons on the list to amend the covenants. By March 19, 2005, Ms. Moore had obtained signatures of all persons on the seller's list, except for one household.

7. On March 19, 2005, Ms. Moore informed the seller that she had obtained all the necessary signatures except for the one household. The seller, assuming he could obtain the final signatures, directed Ms. Moore to prepare a Notice that the seller then signed and delivered to the buyer stating that the covenants had been changed.

8. On April 2, 2005, Mr. Kraft's fiancée removed the contingency on the sale of her property. Kim Moore was not involved in that transaction and was not consulted.

9. The persons in the one household at issue subsequently refused to sign the amending documents. Ms. Moore informed Mr. Kraft that one household had refused to sign and that the covenants had not been changed.

10. Mr. Kraft had not waived his contingency, and the seller informed Mr. Kraft that he would not be expected to proceed with the contract.

11. Mr. Kraft alleged that because his fiancée had removed the contingency on the sale of her property, they were required to move before having found another property to buy. However, Mr. Kraft subsequently acknowledged that the original closing date could not have been met anyway because of changes he had made in the building plans and other issues.

12. Mr. Kraft threatened to bring complaints against Kim Moore with the Department of Regulation and Licensing and to file a civil suit, if he were not compensated as demanded. First Weber and the seller offered compensation for any misunderstanding and for inconvenience, but Mr. Kraft was not satisfied with the amount offered and therefore Mr. Kraft filed the present complaint, in which he alleged intentional misrepresentation and other personal attacks against Kim Moore.

13. The matter has now been settled with a payment from First Weber and the seller to Mr. Kraft. Mr. Kraft then submitted a letter to the Department (attached), confirming various facts and defenses by Kim Moore, recanting the personal attacks originally alleged against Kim Moore, and confirming his own involvement in the failure to amend the covenants and delay in the originally scheduled closing. Among other items, Mr. Kraft now confirms: (a) that there had been no intentional misrepresentation; (b) that the closing would have been delayed anyhow, due to changes he had made in the building plans and other issues; (c) that he realized the covenants could still have been timely amended, but that his own involvement in contacting the father of the one resistant owner may have interfered with the efforts to get the restriction amended; (d) that Mr. Kraft understood he would not be expected to proceed in the transaction if he did not wish to do so, because the contingency had not been waived or met. Mr. Kraft also withdrew his other personal allegations against Kim Moore.

14. Kim Moore acknowledges that she should not have drafted a Notice stating a fact not yet occurring, even though based upon the assumption it would occur and at the direction of a client, and that such would violate the duty to state all material adverse facts in writing. Kim Moore denies the remainder of the allegations, and they are not utilized herein.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation pursuant to Wis. Stat. § 227.44(5).

2. Respondent Kimberly K. Moore has violated Wis. Admin Code § RL 24.07 (2) and Wis Stat. §§ 452.133 (1) (c) and 452.14(3)(L) by drafting a Notice stating a fact which had not yet occurred, even though based upon an assumption it would occur and at the direction of a client, and by failing to notify a party of a material adverse fact.

3. No violation is found against First Weber Group Northern Wisconsin LLC or James R. Imhoff, Jr.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. Respondent **Kimberly K. Moore**, real estate salesperson's license #94-48998 shall be **SUSPENDED** for a period of ten (10) calendar days commencing 5 days from the date of this order. During that period she shall not engage in the practice of real estate. Advertisements placed and listings and buyer agency contracts made prior to the effective date of this order need not be cancelled, but she may not engage in work on existing listings and buyer agency contracts during the suspension period. She does not need to be removed from agency advertising or web sites.

2. Respondent shall within 60 days of the date of this Order, pay **COSTS** of this proceeding in the amount of \$1,947.91. Payment of costs shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

3. In the event Respondent fails to timely submit payment as ordered, or engages in the practice of real estate during the time her license is suspended as ordered, such violation may be construed as conduct imperiling public health, safety and welfare and the Respondent's license SHALL REMAIN SUSPENDED without further notice or hearing, and SHALL REMAIN SUSPENDED until Respondent has complied with the terms of this Order. The Board in its discretion may in the alternative impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

4. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

2/22/07
Date