

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: FINAL DECISION AND ORDER
MICHAEL J. MARTIN, :
RESPONDENT. : LS0706288REB

Division of Enforcement Case File # 05 REB 237

The parties to this action for the purpose of Wis. Stat. § 227.53 are:

Michael J. Martin
W305N2793 Foxwood Ct.
Pewaukee, WI 53072

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

PROCEDURAL HISTORY

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. **Michael J. Martin**, date of birth 01/18/65, is licensed as a real estate salesperson having license # 94-32134. This license was first granted to him on 12/07/89. Mr. Martin's most recent address on file with the Department of Regulation and Licensing is W305N2793 Foxwood Ct., Pewaukee, WI 53072.

2. At all times relevant hereto Respondent Michael J. Martin was employed by Realty 100, Inc., as a salesperson as that term is used in chapter 452 in the Wisconsin Statutes. Bruce Martin is the vice president of Realty 100 Inc. Realty 100 Inc., (license # 91-833837) is located at 10303 W. Oklahoma Ave., Milwaukee, WI.

3. In July 2005, Byron and Ninfi Roe were attempting to market their property as "For Sale By Owner." The Roes' property was located at 3165 Applegate Ln., Brookfield, WI. The Roes had an open house scheduled for July 31, 2005.

4. On or about July 28, 2005, Mr. Martin approached the Roes to obtain a listing contract on behalf of Realty 100, Inc. After some discussion, Mr. Martin and the Roes agreed that if a buyer resulted from their open house that Mr. Martin would reduce his commission.

5. On or about July 29, 2005, Mr. Martin, on behalf of Realty 100, Inc., entered into a WB-1 RESIDENTIAL

LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL with Mr. and Mrs. Roe for the marketing of their Applegate Lane property. The list price was to be \$349,800.00. The Terms of the Contract were from July 30, 2005, through January 31, 2006. Lines 40 and 50 read: "Broker's commission shall be six % or five % (5) if sold by Mike Martin as selling agent." The Listing Contract does not address a commission reduction if a buyer resulted from the Roes' open house.

6. During the open house on July 31, 2005, the Roes showed their home to Robin and Gregory Peterson. On or about August 4, 2005, the Petersons re-visited the Roe's home with a broker with whom they had been working previously. The next day, Mr. Martin called the Roes and notified them that he received an offer to purchase from the Petersons.

7. When the Roes asked about the reduced commission, Mr. Martin explained that he did not mean people who came with an offer from their open house, but rather people who toured the house prior to the Roes signing the listing contract with him on July 29th. Mr. Martin refused to reduce his commission.

8. The Roes stated that had they known that Mr. Martin would refuse to reduce his commission, they would not have signed the listing agreement until after their open house.

CONCLUSIONS OF LAW

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

2. Respondent **Michael J. Martin** has violated:

a. Wis. Admin. Code §§ RL 24.03(2)(b), and RL 24.08, and Wis. Stat. §§ 452.133(1)(a), 452.14(3)(b) and 452.14(3)(i) by failing to reduce all agreements to writing regarding the reduction in the commission if the Roes' open house resulted in a buyer.

b. Wis. Admin. Code § RL 24.03(2)(b), and Wis. Stat. §§ 452.133(1)(a), and 452.14(3)(i) and (k) by falsely claiming he would reduce his commission if the Roes' open house resulted in a buyer.

ORDER

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

IT IS FURTHER ORDERED that:

1. Respondent **Michael J. Martin**, license # 94-32134, be, and hereby is, **REPRIMANDED**.

2. Respondent **Michael J. Martin** shall, within six months of the date of this Order, successfully complete the following education:

a. the **Contracts** module of the pre-licensing salesperson's program; and

b. the **Ethics** module of the pre-licensing salesperson's program, or another ethics course approved in advance by the Department.

Respondent shall attend the courses in person and not on-line, and shall submit proof of the same in the form of verification from the institution providing the education to the Department Monitor at the address provided below. 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:

3. Respondent **Michael J. Martin** shall, within 60 days of the date of this Order, pay a **forfeiture in the amount of \$2,000.00**.

4. Respondent **Michael J. Martin**, shall pay **COSTS** in this matter in the amount of **\$550.00**, within 60 days of the date of this Order.

Payment 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

5. Violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a summary suspension of Respondents' licenses. 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. In the event Respondents fail to timely submit any payment as ordered or complete the education in the manner stated above, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

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

Dated this 28th day of June, 2007.

WISCONSIN REAL ESTATE BOARD

By: Peter A. Sveum
A member of the Board