

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
 :
JEFFREY M. FULLER, :
 : LS0810304REB
RESPONDENT. :

Division of Enforcement Case No. 05 REB 252

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

Jeffrey M. Fuller
1273 Dolan Drive
Sun Prairie, WI 53590

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
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 decision of this matter, subject to the approval of the Real Estate Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Jeffery M. Fuller (“Fuller”), whose date of birth is January 4, 1970, is duly licensed as a Real Estate Salesperson in the state of Wisconsin (94-32566). Mr. Fuller’s most recent address of record on file with the Department of Regulation and Licensing (“Department”) is 1273 Dolan Drive, Sun Prairie, WI 53590. The license was first granted on February 13, 1990, and is due to expire on December 15, 2008.

2. At all times relevant to this matter Mr. Fuller was associated with and acting as an agent for Respondent Real Estate Preferred, Inc. d/b/a RE/Max (“RE/Max”).

3. On July 14, 2005, Mr. Fuller entered into a Residential Listing Contract with D.R.

4. D.R. asserts that he and his spouse selected Mr. Fuller and ReMax due to the availability of "A Guaranteed Buyout Program (GBP)." Mr. Fuller provided the Department with copies of a flier and of a telephone book advertisement announcing the availability of a GBP.

5. There is no reference to the GBP in the listing agreement.

6. On September 13, 2005, D.R. contacted Mr. Fuller about the GBP, and requested a buyout offer under the GBP. Mr. Fuller prepared and sent a one page document with the heading, "Guarantee Buyout," which included the address of the property, a proposed purchase price of \$277,140.00 and a list of charges such as sales commission, title insurance fees and closing fees. The document included a signature line for "Seller acceptance of buyout." The bottom of the document included a statements including, "This is an estimate only..." and "This buyout is subject to the Buyer and Seller signing a State of Wisconsin Offer to Purchase Contract."

7. In early October 2005, D.R. re-initiated discussions regarding the guaranteed buyout. On October 7, 2005, Mr. Fuller replied, "Heres (sic) what you have to do to get it started. You have to contact (AHI to)... set up the inspection on your home. Once the inspection has been completed and the report shows no major defects... then we will get the guarantee offer put together... at the buyout price on the net sheet you already have." A home inspection was conducted by AHI on October 8, 2005.

8. On October 9, 2005, Mr. Fuller contacted D.R. and informed him that he had made the decision to cancel the GBP, after consulting with creditors, due to changing market conditions. Mr. Fuller offered to reimburse D.R. for inspection costs up to \$3,000.00. Mr. Fuller also offered to release D.R. from the listing agreement. On October 10, 2005, D.R. returned the signed Guaranteed Buyout form to Mr. Fuller, and demanded that he purchase D.R.'s home.

9. The Department has approved a residential offer to purchase form which includes optional contingencies for inspections and continued marketing.

10. Per Wis. Admin. Code § RL 24.08, "A licensee shall put in writing all listing contracts... and any other commitments regarding transactions..."

11. Per Wis. Admin. Code § RL 16.04(1), "...a licensee shall use approved forms when acting as an agent or a party in a real estate... transaction."

12. Per Wis. Stat. § 452.14(3)(m), a licensee is subject to discipline if he or she has, "Failed to use forms approved..."

13. Per Wis. Stat. § 452.14 (3)(L), a licensee is subject to discipline if he or she has, "Violated any provision of this chapter..."

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 458.26.

2. The Wisconsin Real Estate Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44 (5).

3. By advertising the availability of a Guaranteed Buyout Program to potential buyers while failing to include any reference to it or statement of the terms of activating the program in the listing agreement, Respondent **Jeffrey M. Fuller** has failed to reduce the terms of a listing agreement to writing, contrary to Wis. Admin. Code § RL 24.08, thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(i).

4. By submitting a "Guarantee Buyout" form containing the property address, a proposed sales price, and conditioning that offer to "buyout" the property upon continued marketing and inspection contingencies, **Jeffrey M. Fuller** has used an unauthorized offer to purchase in lieu of using the authorized offer to purchase with addendums appropriate to the situation (if needed), contrary to Wis. Admin. Code § RL 16.04(1) and Wis. Stat. § 452.14(3)(m).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of **Jeffrey M. Fuller** to practice as a Real Estate Salesperson in the State of Wisconsin (# 94-32566)

shall be, and hereby is, **REPRIMANDED**.

2. Respondent **Jeffrey M. Fuller** shall pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$1,150.00 within one (1) year of the date of signing of this Order.
3. Respondent **Jeffrey M. Fuller** shall pay a forfeiture in the amount of \$250.00 within sixty (60) days of the date of signing of this Order.
4. All payments and reports required by this Order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904

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 Respondent's licenses (#94-32566). 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 any Respondent fails to timely submit any payment as set forth above (if any), or fails to timely submit any report as set forth above (if any), the non-complying Respondent's license (#94-32566) **SHALL BE SUSPENDED**, without further notice or hearing, until Respondent has complied with the terms of this Order.
6. Case Number 05 REB 252 is hereby closed.
7. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Peter A. Sveum
A Member of the Board

10/30/08
Date

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : STIPULATION
JEFFREY M. FULLER, :
 :
RESPONDENT. : LS# _____

Division of Enforcement Case No. 05 REB 252

It is hereby stipulated between Jeffrey M. Fuller, Respondent; and Mark A. Herman, attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent's licensure by the Division of Enforcement (Case No. 05 REB 252). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.

2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, the Wisconsin Administrative Code, and any other provisions of state or federal law.

3. Respondent has been provided with the opportunity to seek legal counsel prior to signing this stipulation.

4. Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.

5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.

6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondents or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board's deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.

7. Respondent is informed that should the Board adopt this Stipulation, the Board's final decision and order is a public record and will be published in accordance with standard Department procedure.

8. The Division of Enforcement joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

JEFFREY M. FULLER, Respondent
1273 Dolan Drive
Sun Prairie, WI 53590

Date

Mark A. Herman, Attorney
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

Date