

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

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:
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FINAL DECISION AND ORDER

SALLY A. WALTZ,

LS0904303REB

RESPONDENT.

Division of Enforcement Case Number: 07 REB 138

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

Sally A. Waltz
Respondent
1312 Wisconsin Avenue
Boscobel, WI 53805

Real Estate Board
c/o Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935

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

PROCEDURAL HISTORY

The Division of Enforcement, Department of Regulation and Licensing (Department), has opened an investigation against Respondent. The parties in this matter agree to the terms and conditions of this Final Decision and Order and the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Board (Board). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Sally A. Waltz (Waltz), whose date of birth is February 8, 1954, has been registered to practice as a real estate broker (#90-47297) in the State of Wisconsin, which was first granted on January 27, 1994, and which will expire on December 15, 2010. Ms. Waltz's last address reported to the Department of Regulation and Licensing is 1312 Wisconsin Avenue, Boscobel, WI 53805. At all times relevant to this matter Ms. Waltz's was affiliated with ERA, Wisconsin River Realty. Ms. Waltz is now the President and supervising broker of Waltz Realty, SC.

2. On April 12, 2007, Ms. Waltz entered into a listing agreement with J.M. for the sale of real estate.

3. Ms. Waltz utilized a Broker Disclosure to Clients form, drafted by Attorney Richard Staff, and copyright protected by the Wisconsin Realtors ® Association. Use of such form is authorized per Wis. Admin. Code § RL 16.04(2). However, a review of the Broker Disclosure to Clients signed by J.M. on April 12, 2007, shows that Ms. Waltz did not ensure that J.M. selected one of the three options concerning consent to multiple representation, found on lines 54-56 of the form. The purpose of these lines is to ensure that the client knowingly consents to or declines multiple representation by the Broker, with or without designated agency, which are permitted under current law.

4. Ms. Waltz states that on the evening of May 2, 2007, she "wrote an offer to purchase for (her) son-in-law and daughter." A review of the offer to purchase shows no statement indicating the nature of Ms. Waltz's relationship to her son-in-law and daughter. A review of documents from purporting to be a copy of Ms. Waltz's file regarding the transaction shows no document which obtains the consent of the seller or any other party to the transaction to Ms. Waltz acting as an agent given her relationship to her son-in-law and daughter.

5. Ms. Waltz states that on the morning of May 3, 2007, that S.F. and spouse "came into my office and wanted to write an offer on the same property." Both offers were presented to the seller, who made a multiple counter-offer to both parties. Ms. Waltz's son-in-law improved his offer by making a counter-counter-offer.

6. S.F. and spouse did not learn of the relationship between Ms. Waltz and the successful buyers until after their offer was rejected. There is no indication in the file that Ms. Waltz ever informed or obtained the consent of S.F. or his spouse of the nature of her relationship to the other competing buyers.

7. The Board accepts Ms. Waltz's claim that she did not actually favor her son-in-law and daughter in the course of this transaction, but finds that her failure to gain written consent to her acting as an agent in this transaction despite her familial relationship to one of two competing buyers did create an appearance of impropriety, which would lead a reasonable person to conclude that she may have favored members of her immediate family, and was a breach of basic notions of ethics and was improper.

8. Per Wis. Admin. Code § RL 24.01(3), "If a licensee violates the rules in this chapter, then the licensee has demonstrated incompetency to act as a broker... in such manner as to safeguard the interests of the public under s. 452.14(3)(i), Stats. However, the term "incompetency" is not limited in its meaning to violations of this chapter."

9. Per Wis. Admin. Code § RL 24.03(2), "(b) Licensees shall act to protect the public against fraud, misrepresentation and unethical practices. (c) Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters, and shall assist, guide and advise the buying and selling public based upon these factors."

10. Per Wis. Admin. Code § RL 24.05(2), "A licensee acting as an agent in a real estate or business opportunity transaction may not act in the transaction... on behalf of the licensee's immediate family... without the prior written consent of all parties to the transaction."

11. Per Wis. Stat. § 452.14(3), "The board may revoke, suspend or limit any broker's... license... or reprimand the holder of the license... if it finds that the holder of the license... has: "(i) demonstrated incompetency to act as a broker... in a manner which safeguards the interest of the public... (or) (k) Been guilty of any other conduct, whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing..."

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 452.14.
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 failing to ensure that the seller properly completed the Broker Disclosure to Clients form, as set forth above in paragraph 3 of the Findings of Fact, Respondent **Sally A. Waltz** failed to assist, guide, and advise the buying and selling public regarding laws, public policies and current market conditions regarding real estate matters, contrary to Wis. Admin. Code § RL 24.03(2)(c), thereby subjecting herself to discipline per Wis. Stat. § 452.14(3).
4. By failing to obtain the written consent of the other parties to the transaction to her acting as an agent despite her familial relationship to one two sets of competing buyers, Respondent **Sally A. Waltz** failed to protect the public against unethical practices, and is guilty of improper conduct.

WHEREFORE, the Board makes the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of **Sally A. Waltz** as a real estate broker (#90-54800) shall be, and hereby is, **REPRIMANDED**

IT IS FURTHER ORDERED that:

2. **Sally A. Waltz** shall pay costs of these investigations in the amount of EIGHT HUNDRED AND FIFTY DOLLARS (\$850.00) within SIX MONTHS of the date of signing of this Order.
3. Payment of costs and other submissions required by this Order shall be mailed, delivered or otherwise transmitted

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

4. 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 license and certification. The Real Estate Board in its discretion may alternatively impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order. In the event that Respondent fails to timely submit any payment of costs as set forth above, Respondent's license and certification (#90-54800) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.
5. Case number 07 REB 138 is hereby closed as to all respondents.
6. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

4/30/09
Date

**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

IN THE MATTER OF THE
DISCIPLINARY PROCEEDINGS
AGAINST

STIPULATION

SALLY A. WALTZ,

LS# _____ REB

RESPONDENT.

Division of Enforcement Case Number: 07 REB 138

It is hereby stipulated and agreed, by and between Sally A. Waltz, Respondent; and Mark A. Herman, attorney for Complainant, State of Wisconsin, 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. 07 REB 138). 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 she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, 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 her; the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to testify herself; 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 her 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. Respondents waive 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 Respondent or her 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 Respondent in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

SALLY A. WALTZ,
Respondent
1312 Wisconsin Avenue
Boscobel, WI 53805

Date

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

Date