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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY PROCEEDINGS AGAINST ROBERT W. KLENZ, RESPONDENT	: : : : :	FINAL DECISION AND ORDER 86 REB 124

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

Robert W. Klenz
S75 W17425 Janesville Rd.
P.O. Box 181
Muskego, WI 53150

Attorney T. Michael Schober
15525 W. National Avenue
P.O. Box 65
New Berlin, WI 53151-0065

Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

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

The rights of a party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information."

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 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. Robert W. Klenz, Respondent herein, S75 W17425 Janesville Road, P.O. Box 181, Muskego, Wisconsin 53150, is licensed as a real estate broker, license #12072, and has been so licensed under the provisions of Wis. Stats. Ch. 452 since January 27, 1975.

2. The Respondent has never previously been the subject of a disciplinary action.

3. Respondent, at all times material to this matter, was doing business as Robert Klenz Realty.

4. On July 2, 1985, Respondent entered into a residential listing contract with Thea Dietrich, seller herein, granting Respondent the exclusive right until July 31, 1985 to procure a purchaser for the property located at 13205 Priegel Drive, Muskego, Wisconsin.

5. On July 2, 1985, Walter C. Nickerson, buyer herein, executed an offer to purchase said property and seller accepted the offer to purchase on July 3, 1985.

6. The offer to purchase provided for earnest money in the amount of $2,000 which buyer paid to Respondent and which was deposited by Respondent in Respondent's real estate trust account.

7. The offer to purchase established a closing date of August 9, 1985 for the transaction, and further provided that time was of the essence with respect to the date of closing.

8. Subsequently, buyer orally requested that the August 9, 1985 date for closing be extended until August 21, 1985, and seller agreed to this amendment to the offer to purchase.

9. Seller signed an "Amendment to Contract of Sale" form on August 10, 1985. According to Mr. Klenz, his salsperson, Robert Pelzmann, indicated to Klenz that the buyer refused to sign the amendment. According to Mr. Pelzmann, the buyer was evasive regarding the signing of the amendment and Pelzmann and the buyer could not reach a mutually acceptable time for the buyer to sign said amendment, despite Pelzmann placing a number of phone calls to the buyer. According to the buyer, he was willing to sign said amendment. The buyer did not sign the amendment.

10. The transaction did not, in fact, close on August 21, 1985, or on any date thereafter.

11. The offer to purchase provided in pertinent part as follows with respect with disbursal of earnest money:

> "Should Buyer fail to carry out this agreement, all money paid hereunder, including any additional earnest money, shall, at the option of Seller, be paid to or retained by Seller as liquidated damages. If such money is held by Broker, Broker shall disburse such money as follows:

1. To Buyer, if Seller has not notified Buyer and Broker in writing of Seller's election to consider all money paid hereunder as liquidated damages or part payment for specific performance within 60 days of closing date set forth in this agreement, or;

2. To Seller as liquidated damages, subject to deductions of Broker's commission and disbursements, if any, if neither party has commenced a lawsuit on this matter within 120 days of the closing date set forth in this agreement.

Should seller be unable to carry out this agreement by reason of a valid legal defect in title which Buyer is unwilling to waive, all money paid hereunder shall be returned to Buyer forthwith, and this contract shall be void."

12. Respondent was notified by a letter dated August 27, 1985, from seller's attorney, Joel T. Elliott, of seller's request that the earnest money be held by Respondent for disbursement pursuant to the terms of the offer to purchase. Seller contended that she was able and willing to close the transaction and deliver clear title on August 21, 1985, and on any date thereafter, but that buyer failed to carry out the agreement.

13. Respondent was notified by letters from buyer dated October 8, 1985, and November 5, 1985, that buyer was demanding return of the $2,000 earnest money. Buyer contended that seller was unable to close the transaction on August 21, 1985 and, therefore, failed to carry out the agreement.

14. Respondent, by letter dated November 8, 1985, addressed to buyer and seller, gave notice of his intent to disburse earnest money on December 10, 1985, in accordance with the terms of the offer to purchase. The proposed disbursal was as follows:

    a. $500 to Metropolitan Survey Co. for a survey on the property that was requested by Mutual S & L.

    b. $1,500 to Klenz Realty as commission for services rendered to the seller.

15. Respondent's notice of intent to disburse earnest money was not sent to buyer or seller by certified mail.

16. Respondent did, in fact, disburse the earnest money on December 10, 1985, as follows:

    a. $500 to Metropolitan Survey Co. for the survey bill incurred at the request of buyer's lender.

    b. $1,500 to Klenz Realty for services rendered to the seller ($858.56 to salesperson Pelzmann and $641.44 to Klenz Realty).

17. The earnest money was disbursed by Respondent after 120 days had elapsed following the August 9, 1985, closing date which had been agreed to by the buyer and the seller in the offer to purchase.

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. The Wisconsin Real Estate Board finds that the respondent, by his conduct as set forth above, and in the attached Stipulation, has violated Wis. Stats. sec. 452.14(3)(i), and Wis. Admin. Code secs 18.09(4) and RL 18.14, demonstrating incompetency to act as a real estate broker by failing to deliver the written notice of intent to disburse earnest money from his trust account to seller and buyer by certified mail.

ORDER

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

IT IS FURTHER ORDERED, that Robert W. Klenz, broker license # 12072, is REPRIMANDED.

IT IS FURTHER ORDERED, that Robert W. Klenz pay the costs of this proceeding in the amount of $300.00 to the Department of Regulation and Licensing, Division of Enforcement, within ten days after the execution of this Order.

Dated this 22nd day of November, 1989.

WISCONSIN REAL ESTATE BOARD

by: Linda Schlueter

knj/11862

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	: :	STIPULATION 86 REB 124
ROBERT W. KLENZ, RESPONDENT.	: :	

It is hereby stipulated between Robert W. Klenz, T. Michael Schober, Attorney for Robert W. Klenz, and Kenneth N. Johnson, Attorney for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. That Robert W. Klenz, Respondent herein, S75 W17425 Janesville Rd., P.O. Box 181, Muskego, Wisconsin 53150, is a real estate broker licensed under the provisions of Chapter 452, Wis. Stats. to practice real estate in the State of Wisconsin pursuant to license #12072, which was granted on January 27, 1975.

2. That a Complaint consisting of three counts was filed against Robert W. Klenz, Respondent herein, on July 21, 1989 and was duly served upon Respondent on July 31, 1989.

3. That the Department of Regulation and Licensing, Division of Enforcement agrees that the Complaint filed July 21, 1989 in this matter is amended so as to be consistent in each respect with the Findings of Fact, and Conclusions of Law set forth in the attached Final Decision and Order.

4. That Mr. Klenz has read the Complaint and understands the nature of the allegations against him.

5. That Mr. Klenz understands that by the signing of this Stipulation he freely, 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 clear, satisfactory and convincing 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, and the Wisconsin Administrative Code.

6. That Mr. Klenz agrees to the adoption of the attached Final Decision and Order, including the facts as set forth therein, by the Real Estate Board, and agrees that the Real Estate Board may reprimand him, and order him to pay costs in the amount of $300.00 to the Department of Regulation and Licensing, Division of Enforcement.

7. That Mr. Klenz agrees to pay costs in the amount of $300.00 to the Department of Regulation and Licensing, Division of Enforcement, within ten days after the execution of the Final Decision and Order in this matter.

8. That pursuant to Wis. Stat. Sections 227.44(5) and 452.14, the Wisconsin Real Estate Board has jurisdiction and authority to enter into this Stipulation and to issue the attached Final Decision and Order.

9. That if any portion of this Stipulation or Findings of Fact, Conclusions of Law or Order is not accepted by the Wisconsin Real Estate Board, the entire Stipulation and Findings of Fact, Conclusions of Law and Order shall be void and have no effect, and the parties shall be restored to their respective positions as they existed at the time of the execution of this Stipulation, and more specifically, the matter will be scheduled for further proceedings by the Hearing Examiner assigned to this matter.

10. That this Stipulation may be submitted directly to the Wisconsin Real Estate Board and need not be submitted to Wayne Austin, the Hearing Examiner appointed in this matter.

11. That if the Board accepts the terms of this Stipulation, 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.

12. That the Division of Enforcement joins Mr. Klenz and Attorney Schober in recommending the Real Estate Board adopt this Stipulation and issue the attached Final Decision and Order.

13. That the parties to this Stipulation agree that the attorney for the Division of Enforcement may appear before the Real Estate Board for the sole purpose of speaking in support of this agreement and answering questions that the members of the Board may have in connection with their deliberations on this Stipulation.

14. That Mr. Klenz enters into this stipulation with the advice and consent of his attorney.

Robert W Klenz — 10/26/89

Robert W. Klenz — Date

October 23, 1989

T. Michael Schober
Attorney for Robert W. Klenz — Date

November 3, 1989

Kenneth N. Johnson, Attorney
Division of Enforcement — Date

knj/11856

NOTICE OF APPEAL INFORMATION

(Notice of Rights for Rehearing or Judicial Review, the times allowed for each and the identification of the party to be named as respondent)

The following notice is served on you as part of the final decision:

1. Rehearing.

Any person aggrieved by this order may petition for a rehearing within 20 days of the service of this decision, as provided in section 227.49 of the Wisconsin Statutes, a copy of which is attached. The 20 day period commences the day after personal service or mailing of this decision. (The date of mailing of this decision is shown below.) The petition for rehearing should be filed with State of Wisconsin Real Estate Board.

A petition for rehearing is not a prerequisite for appeal directly to circuit court through a petition for judicial review.

2. Judicial Review.

Any person aggrieved by this decision has a right to petition for judicial review of this decision as provided in section 227.53 of the Wisconsin Statutes, a copy of which is attached. The petition should be filed in circuit court and served upon State of Wisconsin Real Estate Board.

within 30 days of service of this decision if there has been no petition for rehearing, or within 30 days of service of the order finally disposing of the petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30 day period commences the day after personal service or mailing of the decision or order, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing of this decision is shown below.) A petition for judicial review should be served upon, and name as the respondent, the following: State of Wisconsin Real Estate Board.

The date of mailing of this decision is November 29, 1989.

WLD:dms
886-490

227.49 Petitions for rehearing in contested cases. (1) A petition for rehearing shall not be a prerequisite for appeal or review. Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities. An agency may order a rehearing on its own motion within 20 days after service of a final order. This subsection does not apply to s. 17.025 (3) (e). No agency is required to conduct more than one rehearing based on a petition for rehearing filed under this subsection in any contested case.

(2) The filing of a petition for rehearing shall not suspend or delay the effective date of the order, and the order shall take effect on the date fixed by the agency and shall continue in effect unless the petition is granted or until the order is superseded, modified, or set aside as provided by law.

(3) Rehearing will be granted only on the basis of:

(a) Some material error of law.

(b) Some material error of fact.

(c) The discovery of new evidence sufficiently strong to reverse or modify the order, and which could not have been previously discovered by due diligence.

(4) Copies of petitions for rehearing shall be served on all parties of record. Parties may file replies to the petition.

(5) The agency may order a rehearing or enter an order with reference to the petition without a hearing, and shall dispose of the petition within 30 days after it is filed. If the agency does not enter an order disposing of the petition within the 30-day period, the petition shall be deemed to have been denied as of the expiration of the 30-day period.

(6) Upon granting a rehearing, the agency shall set the matter for further proceedings as soon as practicable. Proceedings upon rehearing shall conform as nearly may be to the proceedings in an original hearing except as the agency may otherwise direct. If in the agency's judgment, after such rehearing it appears that the original decision, order or determination is in any respect unlawful or unreasonable, the agency may reverse, change, modify or suspend the same accordingly. Any decision, order or determination made after such rehearing reversing, changing, modifying or suspending the original determination shall have the same force and effect as an original decision, order or determination.

227.52 Judicial review; decisions reviewable. Administrative decisions which adversely affect the substantial interests of any person, whether by action or inaction, whether affirmative or negative in form, are subject to review as provided in this chapter, except for the decisions of the department of revenue other than decisions relating to alcohol beverage permits issued under ch. 125, decisions of the department of employe trust funds, the commissioner of banking, the commissioner of credit unions, the commissioner of savings and loan, the board of state canvassers and those decisions of the department of industry, labor and human relations which are subject to review, prior to any judicial review, by the labor and industry review commission, and except as otherwise provided by law.

227.53 Parties and proceedings for review. (1) Except as otherwise specifically provided by law, any person aggrieved by a decision specified in s. 227.52 shall be entitled to judicial review thereof as provided in this chapter.

(a) Proceedings for review shall be instituted by serving a petition therefor personally or by certified mail upon the agency or one of its officials, and filing the petition in the office of the clerk of the circuit court for the county where the judicial review proceedings are to be held. Unless a rehearing is requested under s. 227.49, petitions for review under this paragraph shall be served and filed within 30 days after the service of the decision of the agency upon all parties under s. 227.48. If a rehearing is requested under s. 227.49, any party desiring judicial review shall serve and file a petition for review within 30 days after service of the order finally disposing of the application for rehearing, or within 30 days after the final disposition by operation of law of any such application for rehearing. The 30-day period for serving and filing a petition under this paragraph commences on the day after personal service or mailing of the decision by the agency. If the petitioner is a resident, the proceedings shall be held in the circuit court for the county where the petitioner resides, except that if the petitioner is an agency, the proceedings shall be in the circuit court for the county where the respondent resides and except as provided in ss. 77.59 (6) (b), 182.70 (6) and 182.71 (5) (g). The proceedings shall be in the circuit court for Dane county if the petitioner is a nonresident. If all parties stipulate and the court to which the parties desire to transfer the proceedings agrees, the proceedings may be held in the county designated by the parties. If 2 or more petitions for review of the same decision are filed in different counties, the circuit judge for the county in which a petition for review of the decision was first filed shall determine the venue for judicial review of the decision, and shall order transfer or consolidation where appropriate.

(b) The petition shall state the nature of the petitioner's interest, the facts showing that petitioner is a person aggrieved by the decision, and the grounds specified in s. 227.57 upon which petitioner contends that the decision should be reversed or modified. The petition may be amended, by leave of court, though the time for serving the same has expired. The petition shall be entitled in the name of the person serving it as petitioner and the name of the agency whose decision is sought to be reviewed as respondent, except that in petitions for review of decisions of the following agencies, the latter agency specified shall be the named respondent:

1. The tax appeals commission, the department of revenue.

2. The banking review board or the consumer credit review board, the commissioner of banking.

3. The credit union review board, the commissioner of credit unions.

4. The savings and loan review board, the commissioner of savings and loan, except if the petitioner is the commissioner of savings and loan, the prevailing parties before the savings and loan review board shall be the named respondents.

(c) Copies of the petition shall be served, personally or by certified mail, or, when service is timely admitted in writing, by first class mail, not later than 30 days after the institution of the proceeding, upon all parties who appeared before the agency in the proceeding in which the order sought to be reviewed was made.

(d) The agency (except in the case of the tax appeals commission and the banking review board, the consumer credit review board, the credit union review board, and the savings and loan review board) and all parties to the proceeding before it, shall have the right to participate in the proceedings for review. The court may permit other interested persons to intervene. Any person petitioning the court to intervene shall serve a copy of the petition on each party who appeared before the agency and any additional parties to the judicial review at least 5 days prior to the date set for hearing on the petition.

(2) Every person served with the petition for review as provided in this section and who desires to participate in the proceedings for review thereby instituted shall serve upon the petitioner, within 20 days after service of the petition upon such person, a notice of appearance clearly stating the person's position with reference to each material allegation in the petition and to the affirmance, vacation or modification of the order or decision under review. Such notice, other than by the named respondent, shall also be served on the named respondent and the attorney general, and shall be filed, together with proof of required service thereof, with the clerk of the reviewing court within 10 days after such service. Service of all subsequent papers or notices in such proceeding need be made only upon the petitioner and such other persons as have served and filed the notice as provided in this subsection or have been permitted to intervene in said proceeding, as parties thereto, by order of the reviewing court.