

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KEEFE REAL ESTATE, INC.,
MARY T. MYERS,
ROGER H. WOLFF,
DIANA J. CARLSON,
RESPONDENTS.

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FINAL DECISION
AND ORDER
90 REB 131

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

Keefe Real Estate, Inc.
704 Main Street, Box 460
Lake Geneva, WI 53147

Mary T. Myers
590 S. Shore Dr.
Lake Geneva, WI 53147

Roger H. Wolff
Rt. 4, Box 954
Lake Geneva, WI 53147

Diana J. Carlson
Rural Route 1, Box 715
Lake Geneva, WI 53147

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

Department of Regulation & 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 the stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Respondent Keefe Real Estate, Inc. ("Keefe"), 704 Main St., Box 460, Lake Geneva, Wisconsin 53147, is and was at all times relevant to this matter licensed as a real estate corporation pursuant to license #11987, and has been so licensed since December 4, 1975.

2. Respondent Mary T. Myers ("Myers"), 590 South Shore Drive, Lake Geneva, Wisconsin, 53147, is and was at all times relevant to this matter, licensed as a real estate broker pursuant to license #16331, and has been so licensed since March 15, 1977. Myers was affiliated with Keefe as a real estate broker at all times relevant to this matter.

3. Respondent Roger H. Wolff ("Wolff"), Route 4, Box 954, Lake Geneva, Wisconsin 53147, is and was at all times relevant to this matter, licensed as a real estate broker pursuant to license #41677, and has been so licensed since May 21, 1987. Wolff was affiliated with Keefe as a real estate broker at all times relevant to this matter.

4. Respondent Diana J. Carlson ("Carlson"), Rural Route 1 Box 715, Lake Geneva, Wisconsin 53147, is and was at all times relevant to this matter licensed as a real estate broker pursuant to license #43627, and has been so licensed since November 17, 1989. Carlson was affiliated with Keefe as a real estate broker at all times relevant to this matter.

5. On or about February 17, 1990, Carlson drafted a WB-1 residential listing contract - exclusive right to sell for a property located at 42 Upper Loch Vista, Williams Bay, Wisconsin ("the property"). The listing contract was signed by William D. Trude and established a listing price of \$87,900 with a broker's commission of 7% of the selling price. This contract will be referred to herein as the "Trude listing contract".

6. The Trude listing contract created a principal/agency relationship between William D. Trude (principal) and Keefe and the real estate brokers affiliated with Keefe (agents).

7. The Respondents, as agents for Trude, had a fiduciary obligation to fully disclose to Trude all material facts relating to the transaction.

8. The Respondents, as agents for Trude, had a fiduciary obligation to Trude of loyalty and undivided service.

9. On or about February 21, 1990, Myers, as agent for Trude, drafted a WB-11 residential offer to purchase for the signature of Diane T. Schaefer and Timothy J. Schaefer ("Schaefer offer") for the purchase of the property.

10. On or about February 21, 1990, William D. Trude accepted the Schaefer offer and agreed to sell the property for the purchase price of \$94,100 with the closing to take place on or before April 30, 1990.

11. On or about March 13, 1990, the Schaefer informed Keefe, through Keefe's agent Myers, that the Schaefer were no longer interested in purchasing the property.

12. On or about March 14, 1990, Myers informed Carlson that the Schaefer wanted to back out of the transaction. Myers was told at that time that another broker in the office, LaVonne Kincaid, knew of a potential buyer for the Trude property. The names of the potential buyers were John J. Quan and Therese Quan.

13. On March 14, 1990, the Schaefer entered into a listing contract with Keefe for the sale of the property ("Schaefer listing contract"). The Schaefer listing contract was drafted by Myers and signed by Schaefer and established a listing price of \$99,500 and a broker's commission of 5% of the selling price.

14. The Schaefer listing contract created a principal/agency relationship between Schaefer (principal) and Keefe and the real estate brokers affiliated with Keefe (agents).

15. On March 15, 1990, LaVonne Kincaid, as agent for Schaefer, drafted a WB-11 residential offer to purchase for the signature of Therese Quan and John J. Quan from Schaefer for the sum of \$99,500.

16. The Quan offer to purchase was accepted by the Schaefer.

17. At no time on or prior to March 15, 1990, was Trude informed by any of the Respondents of the Schaefer's desire to not purchase the Trude property.

18. At no time on or before March 15, 1990, was Trude informed by any of the Respondents that the Quans were willing to purchase the property for \$99,500.

19. The fact that the Schaefer were no longer interested in purchasing the Trude property and that the Quans were willing to purchase the property for a sum greater than the selling price stated in the Schaefer purchase contract with Trude, are material facts that should have been disclosed to Trude prior to the time that the Respondents agreed to act as agents for the Schaefer.

20. At no time did Trude consent to any of the Respondents becoming an agent for the Schaefer.

21. At no time did Trude consent to any of the Respondents receiving compensation from the Schaefer for the sale of the property to Quan.

22. The Trude to Schaefer transaction closed on April 26, 1990 with Keefe receiving a commission of \$6,587.

23. The Schaefer to Quan transaction closed on April 26, 1990, with Keefe receiving a commission of \$4,975.

24. Respondent Roger H. Wolff was at all times relevant to the facts set forth herein a supervising broker for Keefe and was the supervising broker for both Myers and Carlson.

FACTS IN MITIGATION

25. Prior to entering into the listing contract between Keefe and the Schaefer, there was consultation with the corporate attorney for Keefe. This attorney incorrectly advised Keefe that Keefe could enter into the Schaefer listing contract without violating the Keefe agency obligations owed to Trude. The attorney offered this advice orally and without reviewing any documents and without conducting any legal research. This attorney did not confirm his advice by memo or other written correspondence to Keefe. No record of this attorney's advice was kept by the attorney or by Keefe. The attorney did not bill Keefe any amount for this advice and did not keep time records relating to the time used in providing the advice.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act 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. Respondents Mary T. Myers, Diana J. Carlson and Roger H. Wolff have violated:

a. Sections 452.14(3)(e) and 452.14(3)(i), Wis. Stats., and Section RL 24.025, Wis. Adm. Code, by violating the principal/agency relationship with Trude by acting as an agent for Schaefer without the knowledge and consent of Trude and while they were acting as agent for Trude.

b. Sections 452.14(3)(e) and 452.14(3)(i), Wis. Stats., and Secs. RL 24.025 and 24.05(1), Wis. Adm. Code, by violating the principal/agency relationship with Trude by accepting compensation from the Schaefer without the knowledge or consent of Trude.

c. Sections 452.14(3)(e) and 452.14(3)(i), Wis. Stats., and Secs. RL 24.025 and 24.07(1), Wis. Adm. Code, by violating the principal/agency relationship with Trude by failing to disclose to Trude material facts relating to Schaefer's desire to no longer purchase the property and that a higher purchase price for the property was available from the Quans.

4. Respondent Roger H. Wolff has violated:

a. Sections 452.14(3)(e) and 452.14(3)(i), Wis. Stats., and Section RL 17.08, Wis. Adm. Code, by failing to supervise the activities of the Respondents Mary T. Myers and Diana J. Carlson so as to avoid dual representation by Keefe and by Myers, Carlson and Wolff of both a seller and buyer without first having the full knowledge and consent of all parties to the transaction and so as to be certain that all material facts known to Keefe and its affiliated brokers were properly disclosed to William D. Trude and so as to avoid Keefe receiving compensation from both the buyer and the seller in the transaction without the knowledge and consent of William D. Trude.

5. Respondent Keefe Real Estate, Inc., is subject to discipline pursuant to sec. 452.14(4), Wis. Stats., by reason of the acts or admissions of its brokers Mary T. Myers, Diana J. Carlson and Roger H. Wolff, as set forth herein.

ORDER

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

IT IS FURTHER ORDERED, that Respondent Mary T. Myers, license 16331, within six months after the date of this Order, successfully complete four hours of real estate related education from an educational institution, or employing broker sponsored seminar, approved by the Department of Regulation and Licensing, covering agency law and laws of business ethics, and submit proof of the same in the form of verification, from the provider of the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. 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, that Respondent Diana J. Carlson, license 43627, within six months after the date of this Order, successfully complete four hours of real estate related education from an educational institution, or employing broker sponsored seminar, approved by the Department of Regulation and Licensing, covering agency law and laws of business ethics, and submit proof of the same in the form of verification, from the provider of the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. 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, that Roger H. Wolff, license 41677, is REPRIMANDED.

IT IS FURTHER ORDERED, that Respondent Roger H. Wolff, within six months after the date of this Order, successfully complete four hours of real estate related education from an educational institution, or employing broker sponsored seminar, approved by the Department of Regulation and Licensing, covering agency law and laws of business ethics, and submit proof of the same in the form of verification, from the provider of the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. 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, that Keefe Real Estate, Inc., license 11987, within six months after the date of this Order, sponsor a professional educational seminar for all of its real estate brokers and salespersons working and/or living in Walworth County, Wisconsin. The purpose of this seminar shall be to provide remedial and continuing real estate education to the participants covering the laws relating to the obligations of an agent to his or her principal and the laws of business ethics relating to agency in the practice of a professional real estate broker and professional real estate salesperson. Both the instructor(s) and outline of this seminar shall first be approved by the Real Estate Board on written application of Respondent Keefe Real Estate, Inc.

IT IS FURTHER ORDERED, that Keefe Real Estate, Inc., shall certify the completion of the above described educational seminar within seven months

after the date of this Order, by submitting to the Department of Regulation and Licensing, P.O. Box 8935, Madison, Wisconsin 53708-8935, a written statement of the instructor(s) of the program stating the names and license numbers of the real estate brokers and real estate salespersons attending the seminar and stating that the seminar consisted of at least four (4) hours in time and that the content of the seminar was substantially consistent with the seminar outline approved by the Real Estate Board.

IT IS FURTHER ORDERED, that the educational seminar required to be conducted by Respondent Keefe Real Estate, Inc., under the terms of this Order, shall not be credited towards the continuing education requirements of any real estate broker or real estate salesperson attending the seminar. However, the Four (4) hours of real estate related education required of Respondents Mary T. Myers, Roger H. Wolff and Diana J. Carlson, may be met by their attendance at this seminar.

IT IS FURTHER ORDERED, that Respondents Keefe Real Estate, Inc., Mary T. Myers, Roger H. Wolff and Diana J. Carlson, pay the partial costs of this disciplinary action by making payment to the Department of Regulation and Licensing, P.O. Box 8935, Madison, Wisconsin 53708-8935, within 60 days of the date of this Order, in the amount of \$1,000.00. The obligation for the payment of these costs to the Department of Regulation and Licensing is joint and several between all of the Respondents.

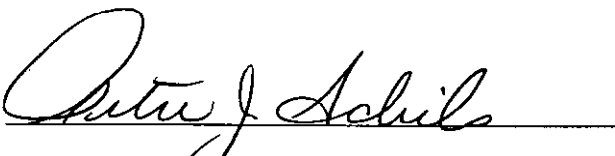
IT IS FURTHER ORDERED, that in the event any of the Respondents fail to comply with the terms of this ORDER relating to required education and/or payment of costs, then and in that event, the license of the Respondent so failing to comply with the ORDER shall be suspended indefinitely until the terms of the ORDER are fully complied with by that Respondent.

IT IS FURTHER ORDERED, that investigative file 90 REB 131 be, and hereby is formally closed.

Dated this 27TH day of AUGUST, 1992.

WISCONSIN REAL ESTATE BOARD

BY:



ATY2-2278/08-11-92

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

KEEFE REAL ESTATE, INC.,
MARY T. MYERS,
ROGER H. WOLFF,
DIANA J. CARLSON,
RESPONDENT.

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STIPULATION
90 REB 131

It is hereby stipulated between the Respondents, Keefe Real Estate Inc., by its President Michael Keefe, and by its attorney Wm. Pharis Horton, and Mary T. Myers, Roger H. Wolff, and Diana J. Carlson, personally and by their attorney Wm. Pharis Horton, and by Attorney Randall G. Leece, co-counsel for Respondent Mary T. Myers, and the Wisconsin Department of Regulation and Licensing, Division of Enforcement by its attorney, Charles J. Howden, as follows:

1. This Stipulation is entered into as a result of a pending formal complaint requesting discipline of the licenses of Keefe Real Estate Inc., Mary T. Myers, Roger H. Wolff, and Diana J. Carlson ("Respondents") by the Division of Enforcement (90 REB 131). These proceedings are now set for hearing before Administrative Law Judge Wayne R. Austin on September 16, 17 and 18, 1992. Respondents consent to the resolution of this formal complaint by this Stipulation and without hearing.

2. Respondents are aware and understand that by the signing of this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify on their own behalf; 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondents voluntarily and knowingly waive the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

4. Respondents are aware of the right to seek legal representation and have retained counsel to represent them in these proceedings.

5. With respect to the attached Final Decision and Order, Respondents neither admit nor deny the facts set forth in the Findings of Fact and the conclusions set forth in the Conclusions of Law. However, Respondents specifically agree that the Board may make such Findings of Fact, reach such

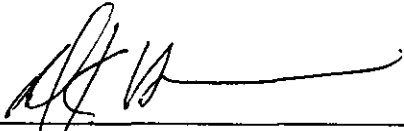
Conclusions of Law, and may enter the Order requiring Education of Respondents Mary T. Myers, Roger H. Wolff, Diana J. Carlson; Reprimanding Roger H. Wolff; requiring Keefe Real Estate, Inc., to conduct an educational program for its brokers and salespersons working in Walworth County; and requiring the payment of the partial costs of this action.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order, and the matter shall be returned to the Administrative Law Judge for further proceedings. In the event that the Stipulation is not accepted by the Board, the parties agree not to contend that the Administrative Law Judge or the Board have been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. 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.

8. Respondents agree that Complainant's attorney, Charles J. Howden, may appear at any deliberative meeting of the Board with respect to the Stipulation but that his appearance is limited to statements in support of the Stipulation and to answer any questions the board may have regarding the Stipulation.

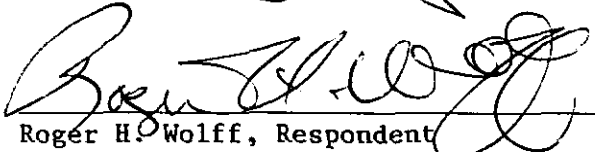
9. The Division of Enforcement joins Respondents and their attorneys in recommending that the Board adopt this Stipulation and issue the attached Final Decision and Order.


Keefe Real Estate, Inc., Respondent
by its President, Michael Keefe

8-22-92
Date


Mary T. Myers, Respondent

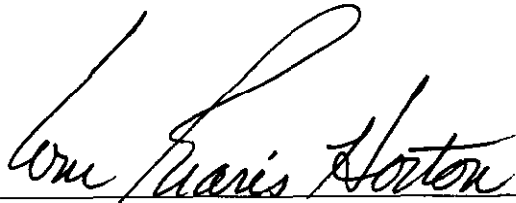
8-24-92
Date


Roger H. Wolff, Respondent

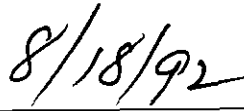
8-24-92
Date


Diana J. Carlson, Respondent

8/24/92
Date



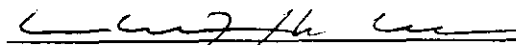
Wm. Pharis Horton
Attorney for all Respondents
P.O. Box 5621
Madison, WI 53705



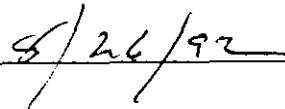
Date

Randall G. Leece
Co-Counsel for Mary T. Myers
P.O. Box 318
Elkhorn, WI 53121

Date



Charles J. Howden, Attorney
Division of Enforcement



Date

CJH:eaj
ATY-1891