

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY
PROCEEDINGS AGAINST

EDINA REALTY, INC.,
ROGER E. HETCHLER, AND
BRENT A. WERNLUND,
RESPONDENTS.

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FINAL DECISION AND ORDER
90 REB 480, 91 REB 088

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

Edina Realty, Inc
700 Second Street
Hudson, Wisconsin 54016

Roger E. Hetchler
1022 Moonbeam Road
Hudson, Wisconsin 54016

Brent A. Wernlund
321 West Grove
Hudson, Wisconsin 54016

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

Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, Wisconsin 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 this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Respondent Edina Realty, Inc., 700 Second Street, Hudson, Wisconsin 54016, ("Edina") is and was at all times relevant to this matter licensed as a real estate corporation pursuant to license #28555, and has been so licensed since March 22, 1983.

2. Respondent Roger E. Hetchler, 1022 Moonbeam Road, Hudson, Wisconsin 54016 ("Hetchler"), is and was at all times relevant to this matter licensed as a real estate broker pursuant to license #17441, and has been so licensed since June 8, 1989. Hetchler is currently under a limited license pursuant to the Order of the Real Estate Board in case 88 REB 243, which Order was signed by the Chairperson of that Board on September 27, 1990. At all times relevant to the matters set forth below, Hetchler was affiliated with Edina as a broker.

3. Respondent Brent A. Wernlund, 321 West Grove, Hudson, WI 54016 ("Wernlund"), is and was at all times relevant to the matters set forth below licensed as a real estate broker pursuant to license #15527, and has been so licensed since April 26, 1978. Wernlund is and was the supervising broker of Hetchler at all times relevant to this matter. Wernlund was reprimanded by the Wisconsin Real Estate Board in case 88 REB 243, which Order was signed by the Chairperson of that Board on September 27, 1990. At all times relevant to the matters set forth below, Wernlund was affiliated with Edina as a broker.

REGARDING CASE 90 REB 480

4. On or about October 10, 1989, Hetchler drafted on behalf of Edina, a WB-3 Vacant Land Listing Contract - Exclusive Right to Sell, wherein a partnership known as Kenall Enterprises (sometimes also known as "Kenall Group") listed certain property for sale with Edina.

5. The vacant land, owned by Kenall Enterprises and listed with Edina, is located at the intersection of Interstate Highway I-94 and U.S. Highway 12 in the Town of Hudson, St. Croix County, Wisconsin, and consists of approximately 34 acres. This land is referred to in this document as the "property".

6. On or about January 23, 1990 Hetchler, as a broker for Edina, drafted a WB-15 Commercial Offer to Purchase for the signature of representatives of Hudson Diesel, Inc., wherein Hudson Diesel, Inc., offered to purchase the property from Kenall Enterprises for the sum of \$440,000.00.

7. On or about January 24, 1990 Hetchler drafted a counter offer wherein Kenall Enterprises offered to sell to Hudson Diesel, Inc. the property on the same terms and conditions set forth in the January 23, 1990 offer except for a change at line 136 relating to when certain approvals in a contingency needed to be procured.

8. On or about January 24, 1990 Hudson Diesel, Inc., accepted the counter offer.

9. On or about February 3, 1990 Hetchler drafted on behalf of Edina, a WB-3 Vacant Land Listing Contract - Exclusive Right to Sell, wherein Hudson Diesel, Inc., listed for sale through Edina the westerly 23 acres of the property Hudson anticipated purchasing from the Kenall Enterprises partnership. The listing price of these 23 acres was \$460,000.00.

10. On or about April 3, 1990 Hetchler received a letter of intent from Bulk Service Corporation of St. Paul, Minnesota, indicating its intent to purchase all of the property (approximately 34 acres) from Hudson Diesel, Inc. The total purchase price in the letter of intent for the entire property was the sum of \$20,000.00 per acre (approximately \$680,000.00) to be calculated by multiplying the exact number of acres to which title transferred as determined by registered survey.

11. On or about April 13, 1990 Hetchler drafted an amendment to contract of sale for the purpose of amending the contract of sale between Kenall Enterprises and Hudson Diesel, Inc. By the terms of this amendment, the original closing date was to be delayed to a time "on or before April 15, 1991." and the following was added to the contract of sale:

"Further, on October 10, 1990 buyer shall pay \$40,000.00 of additional earnest money and on that date the entire \$50,000.00 of earnest money will become nonrefundable and disbursed to sellers. From October 10, 1990 interest will begin to accrue at the rate of 10% per annum on the remaining \$390,000.00. On April 15, 1991 the entire balance of \$390,000.00 plus interest will be due and closing will take place on that date."

12. The above referred amendment to contract of sale was accepted by both Kenall Enterprises and Hudson Diesel, Inc.

13. On or about April 12, 1990, Hudson Diesel, Inc. countered the letter of intent of Bulk Service Corporation and said counter was contingent specifically on the following condition:

"Sellers obligation to perform on this contract is contingent upon fee holder, a third party, accepting on or before April 20, 1990 an amendment allowing closing date equal to that referred to in this contract."

14. On or about October 10, 1990, the Kenall Enterprises partnership was informed that Hetchler and Edina were the brokers for Hudson Diesel, Inc. in the listing and attempted sale to Bulk Service Corporation.

15. At no time did Edina inform Kenall Enterprises that Edina was the agent for Hudson Diesel, Inc. prior to the disclosure on October 10, 1990.

16. At no time did Hetchler disclose to Kenall Enterprises that Hetchler and Edina were representing Hudson Diesel, Inc., in the sale of the property to Bulk Service Corporation, prior to the disclosure on October 10, 1990.

17. At no time did Edina obtain consent from Kenall Enterprises to represent Hudson Diesel, Inc., in the listing and marketing of the property.

18. At no time did Hetchler obtain consent of Kenall Enterprises for Hetchler's obtaining the listing and marketing the property on behalf of Hudson Diesel, Inc.

19. At no time prior to October 10, 1990, did Hetchler disclose to Kenall Enterprises that Bulk Service Corporation was a potential purchaser of the property and that it was willing to pay a price for the property in excess of what Hudson Diesel, Inc., had offered for the property.

20. At no time prior to October 10, 1990, did Edina disclose to Kenall Enterprises that Bulk Service Corporation was a potential purchaser of the property and that it was willing to pay a price for the property in excess of what Hudson Diesel, Inc., had offered for the property.

REGARDING CASE 91 REB 088

21. On or about January 18, 1991, Darrell Bjornstad Construction, Inc., ("Bjornstad") entered into a WB-1 Residential Listing Contract - Exclusive Right to Sell contract with Ray Realty, Inc., ("Ray"), 515 90th Street, Hudson, WI 54016. The term of this listing was from January 18, 1991 up to and including midnight of the 18th day of April, 1991.

22. On or about January 31, 1991, Hetchler drafted, on behalf of Edina, a WB-1 Residential Listing Contract - Exclusive Right to Sell for the signature of Darrell Bjornstad for the same property covered by the Ray listing contract.

23. At the time Hetchler drafted the January 31, 1991 listing contract, he was aware of the existence of the Bjornstad to Ray Realty, Inc., listing contract.

24. Hetchler made no attempt to contact Ray Realty, Inc., to determine whether or not Bjornstad had terminated the January 18, 1991 listing contract.

25. Bjornstad did not terminate the Ray Realty, Inc., listing contract until February 7, 1991.

26. Hetchler and Edina advertised that they had a listing on the Bjornstad property in the January 20, 1991 issue of the St. Paul Pioneer Press.

27. At the time of the January 20, 1991 advertisement Hetchler had no listing of the Bjornstad property.

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. Respondent Roger E. Hetchler has violated:

a. Sections 452.14(3)(e) and 452.14(3)(i), Wis. Stats., and sec. RL 24.025, Wis. Adm. Code, by violating the principal/agency relationship with Kenall Enterprises by acting as an agent for Hudson Diesel, Inc. without the knowledge and consent of Kenall Enterprises and while Hetchler was acting as an agent for Kenall Enterprises;

b. 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 Kenall Enterprises by failing to disclose to Kenall Enterprises material facts relating to the Hudson Diesel, Inc., desire to sell the property and that a higher purchase price for the property was available from another buyer.

c. Sections 452.14(3)(i) and 452.14(3)(k), Wis. Stats., and secs. RL 24.03(2)(b), 24.03(2)(c) and 24.13(5), Wis. Adm. Code by demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public, all as stated in the above allegations regarding Case 91 REB 088.

d. Sections 16.04(1), 24.08, 24.04(1) and 24.04(3), by failing to have a valid listing contract at the time the Bjornstad property was advertised for sale through Edina Realty, Inc.

4. Respondent Brent A. Wernlund, is subject to discipline for failing to supervise the activities of the Respondent Roger E. Hetchler so as to avoid dual representation by Edina and its affiliated brokers of both a seller and buyer without first having the full knowledge and consent of all parties to the transaction so as to be certain that all material facts known to Edina Realty, Inc., and its affiliated brokers were properly disclosed to the seller in Case 90 REB 480.

5. Respondent Edina Realty, Inc. is subject to discipline pursuant to Section 452.14(4), Wis. Stats., by reason of the acts and omissions of its brokers Brent A. Wernlund and Roger E. Hetchler, as set forth herein.

ORDER

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

IT IS FURTHER ORDERED, that Respondent EDINA REALTY, INC., license #28555, is REPRIMANDED.

IT IS FURTHER ORDERED, that Respondent BRENT A. WERNLUND, license #15527, is REPRIMANDED.

IT IS FURTHER ORDERED, that Respondent BRENT A. WERNLUND, within six months of the date of this Order, successfully complete the following course modules from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The four (4) hour Personnel module; and
- b. The four (4) hour Business Ethics for real estate brokers module,

and submit proof of the same in the form of verification from the institution providing 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 the real estate broker license of Respondent ROGER E. HETCHLER, license #17441, is SUSPENDED for a period of 60 days, commencing 10 days from the date of this Order.

IT IS FURTHER ORDERED, that Respondent ROGER E. HETCHLER, within six months of the date of this Order, successfully complete the following course modules from the real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The five (5) hour Consumer Protection module; and
- b. The four (4) hour Business Ethics for real estate brokers module,

and submit proof of the same in the form of verification from the institution providing 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 Respondents, jointly and severally, pay the partial costs of these proceedings in the amount of One Thousand Dollars (\$1,000.00) within thirty (30) days of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent ROGER E. HETCHLER fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above then his real estate broker's license shall be suspended, without further notice, hearing or Order of the Board, until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that in the event Respondent BRENT A. WERNLUND fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above then his real estate broker's license shall be suspended, without further notice, hearing or Order of the Board, until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that in the event the \$1,000.00 of costs are not paid within the time and in the manner as set forth above, then and in that event, all real estate broker licenses of all three Respondents shall be immediately SUSPENDED, without hearing and without further Order of the Board, and said SUSPENSION shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing and said failure to pay these costs shall be considered a violation of this Order of the Board.

IT IS FURTHER ORDERED, that files 90 REB 480 and 91 REB 088 be, and hereby are closed.

Dated this 22ND day of JULY, 1993.

WISCONSIN REAL ESTATE BOARD

By: 

ATY2-4011

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
EDINA REALTY, INC.,	:	90 REB 480
ROGER HETCHLER AND	:	91 REB 088
BRENT WERNLUND,	:	
RESPONDENTS.	:	

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving the issues raised in the formal disciplinary action known as case numbers 90 REB 480 and 91 REB 088. These issues are currently set for hearing before Administrative Law Judge Wayne R. Austin on October 6, 1993. EDINA REALTY, INC., ROGER E. HETCHLER and BRENT A. WERNLUND are collectively referred to as the "Respondent" in this Stipulation. Respondents hereby consent to the resolution of this formal administrative proceeding by this Stipulation the attached Final Decision and Order.

2. Respondents 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 themselves; 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 are represented by Attorney Stanford P. Hill of Sahr, Kunert & Tambornino, Attorneys at Law, 1800 Soo Line Building, 105 South Fifth Street, Minneapolis, Minnesota 55402.

4. 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.

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

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. The matter shall then 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 Board has 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. Respondents waive the right to have notice of that hearing and to be present at the meeting of the Board.

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

EDINA REALTY, INC., Respondent
by its President *Ronald J. Altus* Date *President*

Roger E. Hetchler Date *30 Jun 93*
ROGER E. HETCHLER, Respondent

Brent A. Wernlund Date *6/29/93*
BRENT A. WERNLUND, Respondent

Stanford P. Hill Date *30 June 93*
STANFORD P. HILL, Attorney
for Respondents

Charles J. Howden Date *7/2/93*
Charles J. Howden, Attorney
Division of Enforcement

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 the 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 the 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: the State of Wisconsin Real Estate Board.

The date of mailing of this decision is July 26, 1993.