

WISCONSIN DEPARTMENT OF SAFETY AND PROFESSIONAL SERVICES



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1996

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

:

:

:

FINAL DECISION AND ORDER

Virginia L. Brackens
c/o Wauwatosa Realty Company
5080 North 50th Street
Milwaukee, WI 53218

:

:

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:

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92REB374

92REB387

93REB258

RESPONDENT

:

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

Virginia L. Brackens
c/o Wauwatosa Realty Company
5080 North 50th Street
Milwaukee, WI 53218

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

Department of Regulation and 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 this Stipulation and considers it acceptable.

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

FINDINGS OF FACT

1. Virginia L Brackens, ("Brackens"), 5880 North 50th Street, Milwaukee, WI 53218, is a real estate broker having State of Wisconsin license number 43084, which license was originally granted to her on September 11, 1987.

2. A-1 Action Realty, Inc., ("Corporation"), 3975 North 78th Street, Milwaukee, WI 53222, is a Wisconsin Real Estate Corporation having license number 834047, which license was originally granted to it on January 3, 1990.

3. At all times material hereto Brackens was the sole owner of the corporation and the officer of the corporation. Currently the corporation is a non-working corporation and the license has expired.

4. During 1992 A'letha Willilams, a salesperson for A-1 Action Realty, Inc. collected rents per a property management agreement with property owner Theodore McClelland regarding property located at 6215 N. 84th St., Milwaukee, Wisconsin. Monies collected were deposited into the A-1 Action Trust Account. There were insufficient funds in the account to remit balance due to McClelland.

5. On or about September 30, 1992, Virginia Brackens issued check #481 from the trust account of A-1 Action Realty to transfer earnest money regarding the sale of 5219-21 W. Keefe Avenue, Milwaukee, Wisconsin to First Realty Inc. There were insufficient funds in the account and the check was returned to Corinne Dethardt at First Realty, Inc. for non-payment.

6. On or about September 14, and October 8, 1992, Virginia Brackens issued checks # 478 and #483, respectively, from the trust account of A-1 Action Realty to transfer earnest money to Prudential Preferred Properties. There were insufficient funds in the account and the checks were returned to Alisa Weisbrod at Prudential Preferred Properties for non payment.

7. In May, 1993, Auditor Gene Kleinert, an auditor for the Wisconsin Department of Regulation and Licensing, Division of Enforcement, audited the real estate trust account of the corporation pursuant to pre-scheduled appointments made with Virginia Brackens.

8. Auditor Kleinert found, during the course of the audit, several instances in which the real estate trust account of the corporation failed to have sufficient funds to cover all obligations and, in addition, the trust account bookkeeping system required by section RL 18.13 of the Wisconsin Administrative Code had not been properly maintained by the corporation; and the corporation failed to reconcile the monthly bank statements for the corporation's trust account for a substantial period of time. At the time of the audit, the trust account was overdrawn in the amount of approximately \$20,000.

9. The violations found by Auditor Kleinert included the following:

a. Violation of RL 18.13(3), (4) and (5) of the Wisconsin Administrative Code by failing to have trial balances or bank reconciliation's performed on the corporation's trust account on a monthly basis.

b. Violation of RL 18.09(3)(a) of Wisconsin Administrative Code by failing to withdraw commissions or fees earned by the broker from real estate trust accounts within 24 hours after transactions are consummated.

c. Violation of RL 18.10 of Wisconsin Administrative Code by failing to determine how much money was in the trust account as "personal brokers funds" and by maintaining a sum in excess of \$300 in the trust account as funds to cover bank charges.

d. Violation of RL 24.15 of Wisconsin Administrative Code by failing to maintain adequate funds in the trust account and issuing checks from the account with insufficient funds.

10. In response to investigation of this matter, Virginia Brackens explained that she had delegated total responsibility for compliance with administrative rules for Wisconsin real estate trust accounts to her bookkeeper.

11. As further explanation for failure to perform even minimal compliance with Ch. 18 regarding maintenance and reconciliation of trust account records, Brackens informed the Department of Regulation and Licensing that she had delegated that responsibility to her bookkeeper, and that bookkeeper had failed to perform the work properly.

12. Upon investigation, Brackens informed Investigator Jerney of the Department of Regulation and Licensing that she was unaware of missing funds other than an amount of approximately \$2,500 which was taken from her trust account to pay loans that were in arrears. A letter from LaSonda Buck, of First Wisconsin-Milwaukee, dated January 23, 1992 shows that First Wisconsin debited the account #112798408 for an overdraft collection of \$2,298.94. Mrs. Brackens' attorney drafted a letter to Firststar Corporation (formerly First Wisconsin) asking for the return of the money to the trust account.

13. During the audit, it was discovered that several cash deposits listed on ledger sheets, were never deposited into the trust account. It was also discovered that certain earnest moneys were returned twice to some customers.

14. Upon discovery of the amount of missing moneys, Mrs. Brackens determined that her bookkeeper must have taken this money. Mrs. Brackens did not report a theft to the Milwaukee police.

15. Mrs. Brackens gave a cashiers check for \$500 as partial payment to Preferred Properties, has cleared her debt with Corinne Dethardt through withholding of commission and has not made payment to Theodore McClelland.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to sec. 452.14 Wis. Stats.

2. Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent Virginia L. Brackens has violated: Secs. 452.14(3)(i) of the Wis. Stats. and secs. RL 18.13(3), (4) and (5), 18.09 and 18.10 of the Wis. Admin. Code. By failing to perform the trust account duties and by failing to supervise the delegated bookkeeper, that being the cause of the failure of the corporation to have a proper trust accounting system.

ORDER

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

IT IS FURTHER ORDERED, that the **VOLUNTARY SURRENDER** of the real estate brokers license of Respondent Virginia L. Brackens, license #9043084, is hereby accepted.

IT IS FURTHER ORDERED, that Virginia L. Brackens be issued a real estate salespersons license.

IT IS FURTHER ORDERED, that the real estate salespersons license granted to Respondent Virginia L. Brackens pursuant to this Order be **LIMITED** in the following manner:

1. She shall not have access to or responsibility for, or over, a real estate trust account at any time during the two years immediately subsequent to the issuance of the salespersons license, and

2. She shall provide a copy of the Board Order in this case to her current employer and all subsequent employers during the two years immediately subsequent to the issuance of the salespersons license.

IT IS FURTHER ORDERED, that Respondent Virginia L. Brackens may apply for issuance for a real estate broker license no earlier than two years subsequent to the issuance of the above mentioned limited real estate salespersons license. In the event that the Respondent does apply for a real estate broker license, her application shall be subject to the provisions of all statutes and rules in effect at the time of her application.

IT IS FURTHER ORDERED, that file #92 REB 374, 92 REB 387, and 93 REB 258 become and hereby are closed as to all Respondents.

Dated this 26th day of SEPTEMBER, 1996.

WISCONSIN REAL ESTATE BOARD

By. 

Document 1

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

Virginia L. Brackens
c/o Wauwatosa Realty Company
5080 North 50th Street
Milwaukee, WI 53218
RESPONDENT.

STIPULATION
92REB374
92REB387
93REB258

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving this matter known as investigative files 92REB374, 92REB387 and 93REB258. VIRGINIA L. BRACKENS ("Respondent") consents to the resolution of this matter by this Stipulation and the attached Final Decision and Order.
2. Respondent understands that by the signing of 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; 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, and the Wisconsin Administrative Code.
3. Respondent has had the opportunity to consult with legal counsel regarding these matters and the legal implications of this Stipulation.
4. Respondent voluntarily and knowingly waives 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, Respondent neither admits nor denies the facts as set forth in the Findings of Fact, however, Respondent agrees 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 attached hereto.
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 Division of Enforcement 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. Respondent agrees that Complainant's attorney, she, may appear at any meeting of the Board with respect to the Stipulation and that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives any right she may have to have notice of that meeting and to be present at the meeting of the Board.

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

Virginia L. Brackens
Virginia L. Brackens, Respondent

9-17-96
Date

Gerald M. Scanlan
Gerald M.. Scanlan, Attorney
Division of Enforcement

9-17-96
Date

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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.

Serve Petition for Rehearing or Judicial Review on:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison, WI 53708.

The Date of Mailing this Decision is:

September 30, 1996

1. REHEARING

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in sec. 227.49 of the *Wisconsin Statutes*, a copy of which is reprinted on side two of this sheet. The 20 day period commences the day of personal service or mailing of this decision. (The date of mailing this decision is shown above.)

A petition for rehearing should name as respondent and be filed with the party identified in the box above.

A petition for rehearing is not a prerequisite for appeal or review.

2. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in sec. 227.53, *Wisconsin Statutes* a copy of which is reprinted on side two of this sheet. By law, a petition for review must be filed in circuit court and should name as the respondent the party listed in the box above. A copy of the petition for judicial review should be served upon the party listed in the box above.

A petition must be filed within 30 days after service of this decision if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing.

The 30-day period for serving and filing a petition commences on the day after personal service or mailing of the decision by the agency, or the day after the final disposition by operation of the law of any petition for rehearing. (The date of mailing this decision is shown above.)