

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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FILE COPY

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

ROCHELLE E. MILLER and
RESTAINO BUNBURY &
ASSOCIATES, INC.,
RESPONDENTS.

FINAL DECISION AND ORDER
95 REB 225

LS9708282 REB

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

Rochelle E. Miller
242 Junction Road. Apartment 39
Madison, WI 53717

Restaino Bunbury & Associates, Inc.
7701 Mineral Point Rd.
Madison, WI 53717

Wisconsin 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 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. **Rochelle E. Miller** ("Miller"), date of birth 1/22/32, is licensed in the state of Wisconsin as a real estate broker, having license #90 23695. This license was first granted to her on 5/01/80. Miller is associated with Restaino Bunbury & Associates, Inc.

2. Miller's most recent address on file with the Department of Regulation and Licensing is 242 Junction Road. Apartment #39, Madison, WI 53717.

3 **Restaino Bunbury & Associates, Inc.**, ("Restaino"), is duly licensed in the state of Wisconsin as a real estate corporation having license #91 833782. This license was first granted to it on 1/06/89.

4. Restaino's most recent address on file with the Department of Regulation and Licensing is 7701 Mineral Point Rd., Madison, WI 53717.

5. On or about April 22, 1995, Randall Cullen entered into a buyer's agency contract with Restaino.

6. On or about May 5, 1995, Miller, acting on behalf of Restaino and Cullen, drafted an offer to purchase for the signature of Cullen relating to residential property located at 1414 West Skyline Drive.

7. This property was listed for sale with Coldwell Banker/Sveum Realtors and was owned by Nell R. Ray and W. Harmon Ray.

8. On or about May 7, 1995, Cullen accepted the Ray's counter offer and closing was set for June 30, 1995. By the terms of the offer, occupancy of the premises was to be given to the Cullen at closing.

9. On or about June 3, 1995, Nell Ray discovered Cullen and his children within the home located at 1414 West Skyline Drive without Miller or another licensed real estate agent being present.

10. Following this incident, Nell Ray contacted the listing broker, Pamela Chadwick of Coldwell and told her that Cullen was not to have access to the property prior to closing without the consent of the Rays or without a licensed agent being present at all times. Chadwick immediately informed Miller of this directive.

11. On or about June 15, 1995, Nell Ray again discovered Cullen and his children at the premises at 1414 West Skyline Drive without Miller or any other licensed agent being present.

12. Following this incident, Nell Ray contacted Chadwick and told her the buyer and Miller were not following instructions with respect to access to the property. Chadwick promptly removed the lock box from the home.

13. Prior to closing, and after the lock box had been removed, Nell Ray discovered chalk powder sprinkled throughout the basement of the home.

14. On or about June 29, 1995, Nell Ray arrived at the property to let the buyer in for the final walk-through, and found Miller and Cullen already within the home.

15. When confronted with the fact that Cullen had again been found in the house and that no lock box was located on the property. Miller falsely stated to the seller that the listing broker, Chadwick, had given a key to Cullen.

16. Miller admitted to the Division of Enforcement that she had made a duplicate of the key to the Nell property and had provided that key to Cullen, all without the knowledge or consent of the owners or the listing broker.

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 approve the attached Stipulation pursuant to sec. 227.44(5), Wis. Stats.

3. Respondent Rochelle E. Miller has violated:

Sections RL 24.03(2)(b) and 24.025(1), of the Wisconsin Administrative Code and sections 452.133(1)(a) and 452.14(3)(i) of the Wisconsin Statutes by making a duplicate of the key to property owned by a seller in a transaction and by providing that key to the buyer who was not authorized to have access to the property, all in contradiction to the terms of the purchase contract and in contradiction of specific instructions of the seller and listing broker, thereby failing to protect the public against fraud, misrepresentation and unethical practices by a licensed real estate broker.

4. Respondent Restaino Bunbury & Associates, Inc., has violated:

Section RL 17.08(1) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to provide appropriate supervision of Miller in the above described transaction. Restaino Bunbury & Associates, Inc., is responsible for the acts of Miller pursuant to section 452.12(3) of the Wisconsin Statutes.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Rochelle E. Miller**, license #23695, is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent Rochelle E. Miller within six (6) months of the date of this Order, successfully complete the following course modules from the broker's educational program

- a. The four hour Business ethics course module, RL 25.02(2)(g); and
- b. The five hour Consumer protection course module, RL 25.02(2)(h),

at an educational institution approved by the Department of Regulation and Licensing, 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, WI 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 in the event Rochelle E. Miller 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 her real estate broker's license shall be suspended, without further notice, hearing or order of the Board until she has complied with the terms of this Order.

IT IS FURTHER ORDERED, that Respondent Rochelle E. Miller pay partial costs of this matter in the amount of \$300.00 within 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 Rochelle E. Miller fails to pay the \$300.00 costs within the time and in the manner as set forth above, then her real estate broker's license shall be immediately suspended, without further notice, hearing or 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 her failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that Respondent **Restaino Bunbury & Associates, Inc.**, license #91 833782, is **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent Restaino Bunbury & Associates, Inc. pay partial costs of this matter in the amount of \$300.00 within 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 Restaino Bunbury & Associates, Inc. fails to pay the \$300.00 costs within the time and in the manner as set forth above, then its real estate corporation's license shall be immediately suspended, without further notice, hearing or 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 the failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file #95 REB 225 be, and hereby is, closed.

WISCONSIN REAL ESTATE BOARD

By  _____

A Member of the Board

Date 8/28/97

1997.

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

ROCHELLE E. MILLER and
RESTAINO BUNBURY &
ASSOCIATES, INC.,
RESPONDENTS.

STIPULATION
95 REB 225

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 file 95 REB 225 **Rochelle E. Miller and Restaino Bunbury & Associates, Inc.** . together called "Respondents", and the Division of Enforcement, Department of Regulation and Licensing, by its attorney Charles J. Howden, consent to the resolution of this matter pursuant to the terms of this stipulation and 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 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 have had the opportunity to consult with legal counsel regarding this mater and the legal implications of the stipulation.
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, however, they all agree that the Board may make the Findings of Fact and may reach the conclusions set forth in the Conclusions of Law and 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 this matter. In the event that the Stipulation is not accepted by the Board the parties agree not to contend that

the members of 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 meeting with 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. Respondents waive any right they may have to have notice of that meeting.

Rochelle E. Miller

Rochelle E. Miller

Respondent

August 11, 1997

Date

Thomas F. Bunbury

Restaino Bunbury & Associates, Inc.

Respondent

by its President Thomas F. Bunbury

August 11, 1997

Date

Charles J. Howden

Charles J. Howden, Attorney

Division of Enforcement

August 12, 1997

Date

Department of Regulation & Licensing

State of Wisconsin

P O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On August 28, 1997, the Real Estate Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$300.00 Case #: LS9708282REB

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 300.00

The costs and/or forfeitures are due: September 27, 1997

NAME: Rochelle E. Miller LICENSE NUMBER: 23695

STREET ADDRESS: 242 Junction Road, Apt. 39

CITY: Madison STATE: WI ZIP CODE: 53717

Check whether the payment is for costs or for a forfeiture or both:

X COSTS

_____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL

_____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G \BDLS\FM2145 DOC

For Receipting Use Only

Committed to Equal Opportunity in Employment and Licensing+

Department of Regulation & Licensing

State of Wisconsin

P O Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529 impaired only

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The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 300.00

The costs and/or forfeitures are due: September 27, 1997

NAME: Restaino Bunbury & Associates LICENSE NUMBER: 833782

STREET ADDRESS: 7701 Mineral Point Road

CITY: Madison STATE: WI ZIP CODE: 53717

Check whether the payment is for costs or for a forfeiture or both:

X COSTS _____ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

X INDIVIDUAL _____ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
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#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G \BDLS\FM2145.DOC

For Receipting Use Only

Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of the Disciplinary Proceedings Against

Rochelle E. Miller and
Restaino Bunbury &
Associates, Inc.,

AFFIDAVIT OF MAILING

Respondents.


STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.
2. On September 3, 1997, I served the Final Decision and Order dated August 28, 1997, and Guidelines for Payment of Costs and/or Forfeitures, LS9708282REB, upon the Respondents Rochelle E. Miller and Restaino Bunbury & Associates, Inc. by enclosing true and accurate copies of the above-described document in envelopes properly stamped and addressed to the above-named Respondents and placing the envelopes in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt numbers on the envelopes are P 221 158 410 (Miller) and P 221 158 411 (Restaino).
3. The addresses used for mailing the Decision are the addresses that appear in the records of the Department as the Respondents' last-known addresses and are:

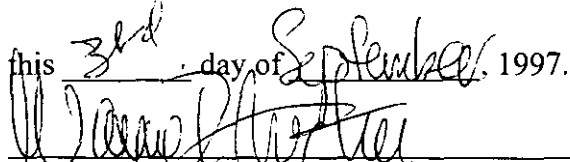
Rochelle E. Miller
242 Junction Road, Apt. 39
Madison WI 53717

Restaino Bunbury & Associates, Inc.
7701 Mineral Point Road
Madison WI 53717



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 3rd day of September, 1997.


Notary Public, State of Wisconsin
My commission is permanent.

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 3, 1997

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.)