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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

SANDRA J. RUDY AND HILLTOP HOMES INC.

RESPONDENTS.

FINAL DECISION AND ORDER

95 REB 071 & 97 REB 257

LS9910284REB

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

*Sandra J. Rudy
E 7851 Bartig Rd.
August, WI 54722*

*Hilltop Homes Inc.
P O Box 385
Fall Creek, WI 54742*

*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 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. **Sandra J. Rudy** ("Rudy"), date of birth 12/09/46, is licensed in the State of Wisconsin as a real estate broker having license # 90-42640. This license was first granted to her on 6/16/87. Rudy's most recent address on file with the Department of Regulation and Licensing is, E 7851 Bartig Rd., Augusta, WI 54722.
2. At all times relevant to the facts set forth below Rudy was an officer and principal of Hilltop Homes Inc. Hilltop Homes Inc. was licensed with the Department of Regulation and Licensing as a real estate business entity, license # 91 834491, effective December 13, 1993. The license expired on December 31, 1998. Hilltop Homes Inc's. most recent address on file with the Department of Regulation and Licensing is P O Box 385, Fall Creek, WI. 54742.
3. Gary McIntosh, who is not a real estate licensee, is also an officer and principal of Hilltop Homes Inc.
4. At all times relevant to the facts set forth below Rudy's married name was Kinderman-Rudy and she was the real estate broker first for JerSan Realty and then Valley Realty both located in Fall Creek, WI 54742.

COUNT I

5. On or about January 16, 1989, Patricia Osborne entered into a Management Agreement with Respondent, then doing business as JerSan Realty, for the rental and management of her property then known as Rt. # 1 Fall Creek, WI. The agreement was to initially run from January 16, 1989, to January 31, 1991, but was later

apparently extended to 1997. By paragraph 2 of this agreement Respondent was to "furnish the services of its organization for the rental operation and management of the Premises". A copy of the JerSan Realty Management Agreement is attached as **Exhibit 1** and is incorporated herein by reference.

6. On or about January 26, 1989, Ms. Osborne entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Rudy, for the sale of the Rt. 1 Fall Creek property. The listing price was \$26,000.00. A copy of the Residential Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 2** and is incorporated herein by reference.

7. By Amendment to Listing contract dated January 29, 1990, the expiration date of the Residential Listing Contract-Exclusive Right To Sell agreement (Exhibit 2), was changed from January 31, 1990, to January 31, 1991. Lines 10 and 11 of the Amendment to Listing Contract states: "also includes management contract to January 31, 1991". Respondent is now doing business as Valley Realty. A copy of the Amendment To Listing Contract as prepared by Rudy is attached as **Exhibit 3** and is incorporated herein by reference.

8. On or about January 1, 1990, Ms Osborne entered into an Exclusive Listing Contract For Rental Of Property agreement with Respondent concerning the above same property now known as Rt. 2 Hillview Drive, Fall Creek. Terms of the contract are from January 1, 1990, through December 31, 1995. Line 27 of the Exclusive Listing Contract For Rental Of Property states that; " Broker has option of sale by Land Contract ". A copy of the Exclusive Listing Contract For Rental Of Property is attached as **Exhibit 4** and is incorporated herein by reference.

9. Ms. Osborne lived in the above Hillview Drive property for approximately 18 years prior to her vacating it in 1989. Subsequent to Ms. Osborne vacating the premises, Rudy rented the property to a number of tenants prior to selling it to James and Michelle Ganje.

10. On or about December 4, 1992, Rudy drafted a Residential Offer To Purchase for James & Michelle Ganje for the property now known as 1044 Hillview Dr., Lincoln WI. The offered price was \$25,000.00, by land contract, with closing to take place on or before December 20, 1992. Ms. Osborne verbally agreed to the terms of the offer but did not sign the document at Line 149 formally accepting the offer. A copy of the Residential Offer To Purchase is attached as **Exhibit 5** and is incorporated herein by reference.

11. On or about December 16, 1992, James and Michelle Ganje entered into a Land Contract with Patricia Osborne for the purchase of the Hillview Dr. property. The purchase price was \$25,000.00, monthly payments were to be in the amount of \$250.00 plus \$50.00 for tax escrow. The land contract also indicates that the property was being accepted by the purchaser in "as is " condition. A copy of the Land Contract is attached as **Exhibit 6** and is incorporated herein by reference.

12. Prior to December 16, 1992, Rudy had represented to the Ganje's that the septic system was in working condition and that the westerly boundary of the property ran along the existing fence line 40 feet west of the house. In the spring of 1993, the Ganje's discovered that the septic system servicing the house was a pipe leading out to a open drainage pit located in the backyard. Ganje's also discovered the actual lot line ran about 3 feet west of the house rather than along the fence line, thereby substantially decreasing the size of the lot.

13. On or about March 2, 1995, the Granje's received a letter titled "Determination of Failure/Enforcement Order" from Ken Jain, Environmental Health Specialist, Eau Claire City/County Health Department, Eau Claire WI. The letter informed the Ganje's that their

sanitary system was failing as it was discharging to the ground surface and required the Ganje's to replace or repair the system by September 23, 1995. A copy of Mr. Jain's March 2, 1995, letter is attached as **Exhibit 7** and is incorporated herein by reference.

14. On or about August 1, 1995, the Granje's commenced a civil action in Circuit Court, Eau Claire County against Patricia Osborne and Rudy seeking a court award for compensatory/pecuniary damages, alleging among other things misrepresentation as to the septic system and lot line.

15. On or about September 25, 1996, the Circuit Court Branch 3 of Eau Claire County found that Rudy and Osborne were liable to the Ganje's based on a strict responsibility misrepresentation involving the septic system and lot line. A copy of the Decision filed September 25, 1996, Case No. 95CV419, is attached as **Exhibit 8** and is incorporated herein by reference. A copy of an October 22, 1996, Supplemental Decision is attached as **Exhibit 9** and is incorporated herein by reference.

16. On or about December 12, 1996, a Judgement was entered against Patricia Osborne and Rudy jointly and severally in Circuit Court Branch 3 of Eau Claire County, awarding the Ganje's \$17, 745.52 in damages and attorney fees. A copy of the Judgement filed December 12 1996, Case No. 95CV419, is attached as **Exhibit 10** and is incorporated herein by reference.

COUNT II

17. On or about September 9, 1994, Patrick Saunders, District Administrator for the School District of Fall Creek, entered into a Commercial Listing Contract-Exclusive Right to Sell agreement with David Fitzgerald, a licensee with Kleven Realtors Inc. of Eau Claire, WI., for the sale of an abandoned Middle School located at 142 E. Washington Avenue, Fall Creek WI. The listing price was \$49,900.00 with minimum earnest money of \$1,000.00 payable within 2 days of acceptance. Lines 24-26 of the listing contract states: "Seller prefers to sell property in "as is" condition. Buyer is aware that the property may have asbestos and lead base paint. Buyer to inspect at Buyer's option". A copy of the Commercial Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 11** and is incorporated herein by reference.

18. On or about October 7, 1994, Rudy prepared a Disclosure of Real Estate Agency for potential buyer Gary McIntosh, acknowledging that she was the owner's agent, i.e. the School District of Fall Creek. Gary McIntosh, as president of PSL Inc., signed this document on October 7, 1994, acknowledging Rudy's agency responsibilities. There is no record of an entity called PSL Inc. ever being incorporated under Wisconsin law per the Wisconsin Secretary of States office. A copy of the Disclosure of Real Estate Agency is attached as **Exhibit 12** and is incorporated herein by reference.

19. On or about October 7, 1994, a Commercial Offer To Purchase was drafted by Rudy on behalf of buyer Gary McIntosh in his capacity as President of PSL Inc., a non-existent corporate entity. The offered price was \$10,000.00, with closing to take place on or before November 15, 1994. Lines 24-26 indicates that buyer accepts property as is and takes responsibility of same. A copy of the Commercial Offer To Purchase is attached as **Exhibit 13** and is incorporated herein by reference.

20. On or about October 18, 1994, the School District countered Mr. McIntosh's offer

(Exhibit 13). The Counter Offer was prepared for the District by attorney G. Scott Nicastro, of Weld, Riley, Prenn & Ricci, S.C. The purchase price was to be \$19,900.00. Lines 29-32 read: "The seller does not warrant but advises Buyer that the property may have lead based paint on the structure and does have asbestos materials in the structure or materials used in constructing the building. Lead paint and asbestos are hazardous materials. Seller will assist Buyer in locating asbestos". A copy of Mr. Saunders' Counter-Offer on behalf of the School District is attached as **Exhibit 14** and is incorporated herein by reference

21. On or about October 21, 1994, Rudy drafted Counter Offer No.2 for Mr. McIntosh with a purchase price of \$12,000.00. Lines 9-15 indicate, " Terms in Counter Offer drafted by Attorney's Weld, Riley Law are acceptable, reference first Counter Offer drafted by G. Scott Nicastro, But -1- Purchase price to be Twelve Thousand (\$12,000.00)". This last counter was accepted by Mr. Saunders on behalf of the School District on or about October 24, 1994. A copy of Mr. McIntosh's Counter-Offer to Mr. Saunders' counter is attached as **Exhibit 15** and is incorporated herein by reference.

22. PSL Inc. allegedly experienced some financial problems between The Offer To Purchase and Acceptance and could not come up with the \$12,000.00 needed to close the transaction. Mr. McIntosh and Rudy then decided to have Hilltop Homes Inc. purchase the property.

23. On or about October 27, 1994, Rudy informed the listing agent Dave Fitzgerald that a check for the building would be sent on October 28, 1994. She also stated " Please do Deed in the name of Hilltop Homes Inc. per Buyers request." A copy of Rudy's October 27, 1994, note to Fitzgerald is attached as **Exhibit 16** and is incorporated herein by reference.

24. By cover letter dated October 28, 1994, Rudy forwarded a check drawn on Valley Realty's Trust Account in the amount of \$12,000.00 as payment for the Middle School. The note states in part: "Please advise as to closing - if your office, school - time - Friday or Monday buyer will be in town, Sandy." A copy of the October 28, 1994, cover letter is attached as

Exhibit 17 and is incorporated herein by reference. A copy of the \$12,000.00 check drawn on the Valley Realty Trust Account is attached as **Exhibit 18** and is incorporated herein by reference.

25. The transaction closed on November 7, 1994, and a Quit Claim Deed dated November 4, 1994, was given to Hilltop Homes Inc. by the Fall Creek School District. The Closing Statement for the transaction dated November 7, 1994, listed the Buyer as Hilltop Homes Inc. but is signed only by Gary McIntosh. A copy of the November 4, 1994, Quit Claim Deed is attached as **Exhibit 19** and is incorporated herein by reference. A copy of the November 7, 1994, Closing Statement is attached as **Exhibit 20** and is incorporated herein by reference.

26. The School District of Fall Creek was never informed by Rudy that she was a buyer and the District gave no written consent for her to purchase the property as required by Wisconsin Law.

27. On or about December 23, 1994, an agreement was entered into between Gary McIntosh, Dennis Witmer, and

Rudy for the demolition of the school now owned by Hilltop Homes Inc. The agreement indicates that Gary McIntosh is responsible for any asbestos removal or related concerns. The agreement provides that, "Work may commence at any time after this agreement is signed by both parties". A copy of this agreement is attached as **Exhibit 21** and is incorporated herein by reference.

28. Work on demolishing the Middle School was begun by Witner shortly after the December 23, 1994, contract with McIntosh and Rudy was signed. The Department of Natural Resources became aware of the demolition project and on or about March 30, 1995, sent a Letter of Noncompliance/Closeout to Sandy Kinderman because of Hilltop Homes Inc's. failure to submit a "Notification of Demolition" (4500-113) ten days prior to demolition. A copy of the Letter of Noncompliance/Closeout from the Department of Natural Resources signed by Michael Blodgett, P.E. Air Engineer is attached as **Exhibit 22** and is incorporated herein by reference.

29. On or about April 17, 1995, a Notification of Demolition And / Or Renovation and Application For Permit Exemption document was prepared by Mark J. Fredrickson of Asbestos Home Safety on behalf of Gary McIntosh, Hilltop Homes Inc. for the Department of Natural Resources. The results of Mr. Fredrickson inspection indicated that there apparently was only a small amount of asbestos material at the site. A copy of the Notification of Demolition And/Or Renovation and Application For Permit Exemption is attached as **Exhibit 23** and is incorporated herein by reference.

30. On or about April 17, 1995, a bill from Asbestos Home Safety for \$100.00 was sent for work performed to Gary McIntosh-Hilltop Homes Inc. The charge was for; "Set up of Demolition Application, conference with Mike Blodgett, Ten day notification to state of Wisconsin, and Ten day notification to DNR". At the bottom of the bill in Rudy's handwriting appears the following: " Hi - enclosed is check for \$100.00, not sure as to what else I needed to send - Sandy - Hilltop Homes." A copy of the Billing is attached as **Exhibit 24** and is incorporated herein by reference.

31. On or about May 11, 1995, the Department of Natural Resources sent an Asbestos Abatement Notification letter to Asbestos Home Safety responding to the Notification of Demolition And /Or Renovation and Application For Permit Exemption (Exhibit 23). This notification allowed for the continuation of the abatement project provided it was performed in compliance with Wisconsin Administrative Code Chapter NR 447. A copy of the Asbestos Abatement Notification letter is attached as **Exhibit 25** and is incorporated herein by reference.

32. The demolition continued by a party other than Asbestos Home Safety who were hired by Hilltop Homes Inc. The debris from the School was transported off site and dumped on property owned by Ben Green. Ben Green's property was not a waste disposal site operated in accordance with Wis. Adm. Code sec. NR 447.17 and no waste shipping records were maintained by Hilltop Homes Inc. as required by Wisconsin law.

33. On or about April 25, 1996, Mike Blodgett, a representative from the Department of Natural Resources, inspected the area where the school debris had been dumped. Mr. Blodgett obtained samples of the dumped school debris in five different locations within the site. The samples were forwarded to Wisconsin Occupational Health Laboratory, Madison WI. The scientific analysis revealed that 4 out of 5 samples contained between 10 and 95 percent Chrysotile Asbestos (regulated asbestos). A copy of the analysis from the Wisconsin Occupational Health Laboratory is attached as **Exhibit 26** and is incorporated herein by reference.

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 **Sandra J. Rudy** has violated:

a. Wis. Adm. Code sec. RL 24.025, Wis. Adm. Code sec. RL 24.07(1)(a) and Wis. Adm. Code sec. RL 24.07(2) (code rules in effect in 1992), and Wis. Stats. sec.452.14(3)(i) by failing to discover and disclose to the Ganje's the failing condition of the septic system and for the misrepresentation of the boundary lines of the property.

b. Wis. Admin. Code RL 24.025 and Wis. Admin. Code RL 24.05(2) and Wis. Stats. sec. 452.133(3)(b), Wis. Stats. sec. 452.14(3)(i) and Wis. Stats. sec. 452.14(3)(L) by failing to disclose in writing her interest as principal in Hilltop Homes Inc., the purchaser of the property located at 142 E. Washington Avenue, Fall Creek WI., and by acting in a transaction in her own behalf or on behalf of her business entity without the written consent of all parties to the transaction.

c. Wis. Adm. Code sec. RL 24.17(1), Wis. Adm. Code sec. NR 447.13(2)(a) 1, and Wis. Adm. Code sec. NR 447.13(4)(a), and Wis., Stats. 452.14(3)(i), by failing to deposit all asbestos-containing waste material at a waste disposal site operated in accordance with Adm. Code sec. NR 447.17, and by failing to maintain proper waste shipping records, all laws which substantially relate to the practices of

a real estate broker or salesperson.

ORDER

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

IT IS FURTHER ORDERED, that **Sandra J. Rudy's**, license to practice as a real estate broker in Wisconsin (license No. 42640) be, and hereby is, **SUSPENDED** for a period of ninety days, commencing on the effective date of this Order.

IT IS FURTHER ORDERED, that **Hilltop Homes Inc.** right to renew its license as a real estate business entity (license # 91-834491) be and hereby is **SUSPENDED** for a period of three years, commencing on the effective date of this Order.

IT IS FURTHER ORDERED, that Respondent **Sandra J. Rudy**, within six months of the date of this Order, successfully complete the following course modules from the 36 hour pre-licensing real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

a. The four-hour Business ethics module - section RL 25.02(2)(g) of the Wisconsin Administrative Code.

b. The five-hour Consumer protection module - section RL 25.02(2)(h), of the Wisconsin Administrative Code.

c. The three-hour Specialty areas module - section RL 25.02(2)(i), of the Wisconsin Administrative Code.

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 Respondent **Sandra J. Rudy** fails to successfully complete the educational requirements within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent Sandra J. Rudy, her real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until further Order of the Board.

IT IS FURTHER ORDERED, that Respondent **Sandra J. Rudy**, pay partial costs of this matter in the amount of \$750.00, within 90 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 **Sandra J. Rudy** fails to pay the \$750.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Sandra J. Rudy**, her real estate license shall be suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said partial costs have been paid to the Department of Regulation and Licensing and her failure to pay the partial costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that files 95 REB 071 & 97 REB 257 be, and hereby are, closed.

Dated this 28th day of October, 1999.

WISCONSIN REAL ESTATE BOARD

By

Richard E. Hinsman

A member of the Board

