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IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST

TOM K. NIELSEN

Respondent :

FINAL DECISION AND ORDER

96REB305

LS9903256REB

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

*Tom K. Nielsen
508 Knollwood Dr.
Hudson, WI 54016*

*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 Real Estate Board ("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. **Tom K. Nielsen**, ("Nielsen"), 508 Knoll Wood Dr., Hudson, WI 54016, is and was at all times relevant to the facts set forth herein, a real estate salesperson employed by Burnet Realty, Inc., and licensed to practice as a real estate salesperson in the State of Wisconsin pursuant to license # 37695, which was originally granted on August 6, 1992.
2. Burnet Realty, Inc., ("Burnet Realty"), 219 2nd St., Hudson, WI 54019, is and was at all times relevant to the facts set forth herein, a real estate corporation licensed to practice as a real estate brokerage in the State of Wisconsin, pursuant to license # 833997, which was originally granted on July 31, 1990.
3. Tobin A. Sauro, ("Sauro"), 2237 Sixth St. E., St. Paul, MN 55119, is and was at all times relevant to the facts set forth herein, a real estate broker licensed to practice as a real estate broker in the State of Wisconsin pursuant to license # 47436, which was originally granted on May 17, 1994. Sauro is and was employed by Burnet Realty as a real estate broker at all times relevant hereto.
4. Licensee Nielsen was supervised, at all times relevant hereto and in regard to the real estate sales transactions described herein, by licensed broker, Sauro, who is broker of record for the Burnet Realty office located in Hudson, Wisconsin, but maintains his office in Stillwater, Minnesota. Sauro is also the broker of record for the Burnet Realty office in Stillwater, Minnesota. The Hudson office of Burnet Realty is a "branch" office as defined in Section RL 17.02(1) Wis Adm Code. Nielsen is the associate branch manager in Hudson, Wisconsin

GLINIEKI/VELMAN TRANSACTION (96 REB 305):

5. On or about February 26, 1995, Nielsen, acting as a seller's broker, drafted a WB-11 Residential Offer to

Purchase wherein the buyers, Matthew M. Gliniecki and Patti A. Velman, offered to purchase property located at 459 Jensen Lane, Hudson, Wisconsin for \$119,900. A copy of the WB-11 Residential Offer to Purchase signed by Gliniecki and Velman is attached to this document as **Exhibit A**, and incorporated herein by this reference.

6. On or about 10/13/94, the sellers, Kathleen and Daniel Ostlund, signed a Real Estate Condition Report regarding property located at 459 Jensen Ln., Hudson, Wisconsin. A copy of the Real Estate Condition Report signed by buyers and sellers is attached to this document as **Exhibit B**, and incorporated herein by this reference.

7. The information contained on the Ostlund Real Estate Condition Report states as *"incorrect"* on Line 17, that the owner is *"aware of a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on, neighboring properties."* **Exhibit B**.

8. On or about June 15, 1992, the Wisconsin Department of Natural Resources ("DNR") produced an East Hudson ground water study showing the boundaries of contaminated well water in the St. Croix/Hudson area. The boundary on this map includes Jensen Lane. A copy of the June 15, 1992, study is attached to this document as **Exhibit C** and is incorporated herein by this reference.

9. On or about July 24, 1992, DNR revised the well construction zone map and changed the boundaries of the well advisory zone. The new boundary line extends down Jensen Lane. A copy of this July 24, 1992, revision is attached hereto as **Exhibit D**, and is incorporated herein by this reference.

10. On or about November 7, 1994, DNR sent a letter to Wisconsin brokers through the Wisconsin Board of Realtors informing of the need to disclose the well water contamination problem in the Town of Hudson to all clients and potential buyers who are interested in purchasing property in the well water advisory area. A copy of the November 7, 1994 letter from DNR is attached hereto as **Exhibit E**, and is incorporated herein by this reference.

11. On or about August, 1995, an advisory notice was sent by DNR to all real estate offices and homeowners in the Hudson area, *"Status Report: Special Well Construction Advisory Area."* A copy of the August, 1995 DNR letter is attached to this document as **Exhibit F**, and incorporated herein by this reference.

12. Nielsen did not disclose to buyers, Gliniecki and Velman, that the property on Jensen Lane was directly adjacent to the designated well water advisory zone at the time that he showed the property to the buyers or when he prepared the Offer to Purchase on their behalf.

13. On February 5, 1996, Gliniecki received a letter from Ayres Associates which stated the analytical test results of water samples from his water supply. The water samples had been collected in November or December of 1995. The test results showed that the Gliniecki well contained one or more volatile organic compounds ("VOC") at concentration levels exceeding the "Preventive Action Limit ("PAL") " A copy of the February 5, 1996, letter from Ayres Associates to Gliniecki is attached hereto as **Exhibit G**, and incorporated herein by this 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 **Nielsen** has violated:

Sec. 452.133(c) of the Wisconsin Statutes, Chapter RL 24.07(2) and Chapter RL 24.07(3) of the Wisconsin Administrative Code by failing to disclose a material adverse fact; namely, that that the property which they showed and/or sold to buyers, Gliniecki and Velman was adjacent to an underground water contamination site, designated as a well water advisory area.

ORDER

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

IT IS FURTHER ORDERED, that Respondents Tom K. Nielsen, within 6 months of the date of this Order, successfully complete the following course modules from the real estate salesperson's course at an educational institution approved by the Department of Regulation and Licensing:

- a. The five hour listing agreement module (RL 25.03(3)(d) and
- b. The four hour ethical real estate practices (RL 25.03(3)(m) and

submit proof of this 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 Tom K. Nielsen 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 and in that event, and without further notice to the Respondent Tom K. Nielsen, his real estate license shall be immediately suspended without further hearing and without further Order of the Board, and said suspension shall continue until he has complied with the terms of this Order.

IT IS FURTHER ORDERED, that the portion of case file 96 REB 305 involving Tom K. Nielsen is hereby closed.

Dated this 25th day of March, 1999.

WISCONSIN REAL ESTATE BOARD

By James R. Imhoff, Jr.

