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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST :

**MELVYN F MUELLER & MUELLER REALTY
AND AUCTION SERVICE INC.,**

RESPONDENTS

FINAL DECISION AND ORDER

LS0010264REB

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

Melvyn F. Mueller

404 State St.

Neillsville, WI 54456

Mueller Realty & Auction Service Inc.

211 E. Division St.

Neillsville, WI 54456

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. **Melvyn F. Mueller** ("Mueller"), date of birth 04/03/41, is licensed in the State of Wisconsin as a real estate broker having license # 90-35257. This license was first granted to him on 08/14/85. Mueller's most recent address on file with the Department of Regulation and Licensing is, 404 State St. Neillsville, WI 54456.

2. Mueller Realty and Auction Service Inc. is licensed in the State of Wisconsin as a real estate business entity having license # 91-834425. This license was first granted on June 28, 1993. Mueller Realty and Auction Service Inc's most recent address on file with the Department of Regulation and Licensing is 211 E. Division St. Neillsville, WI 54456.

3. At all times relevant to the facts set forth below Mueller was the real estate broker/owner of a real estate business franchise d/b/a Century 21 Mueller Realty, Inc., located at 211 E Division St., Neillsville WI 54056.

4. On or about September 30, 1996, Edward W. Stepak entered into a Service Agreement with Steve Gress of Forestry Services, 6259 Heller St. Vesper, WI, for the harvesting and sale of selected timber located on his 40 acres at W6485 Hwy. 95, Township of Levis, WI. The intent of the Service Agreement was to "set up for late fall 1996 timber sale". This agreement was signed by Mr. Gress and by Mr. Stepak on September 30, 1996. A copy of the Service Agreement is attached as **Exhibit 1** and is incorporated herein by reference.

5. On or about November 21, 1996, Mr. Stepak entered into a Timber Sale Contract with Dale Heil of D & K Enterprises who was to cut down and purchase the timber as identified by the September 30, 1996, Service Agreement (Exhibit 1). Obligations under the contract were to be completed by March 15, 1998, but the contract specifically provided that extensions could be granted at the discretion of the Seller. A copy of the Timber Sale Contract is attached as **Exhibit 2** and is incorporated herein by reference.

6. By letter dated January 28, 1998, Mueller's Century 21 Franchise agreement was canceled by Century 21 Real Estate Corporation - "Re: Notice of Termination of Century 21 Real Estate Franchise Agreement # 1702". The termination was effective January 29, 1998, and was based upon the "failure to meet the minimum operating standards". Included with the termination notice was a document titled Procedures After Termination. Lines C, D, and E of the Procedures document instructed Mueller to immediately and permanently discontinue the use of all CENTURY 21 marks indicating that Franchisee is or ever was an authorized CENTURY 21 franchise, promptly destroy or surrender to CENTURY 21 Regional all stationary, letterheads, forms, manuals, printed matter and advertising containing Century 21 marks and immediately and permanently discontinue all advertising as a CENTURY 21 franchise. A copy of the Notice of Termination of Century 21 Real Estate Franchise Agreement #1702 and attached Procedures After Termination is attached as **Exhibit 3** and is incorporated herein by reference.

7. On or about March 11, 1998, Mr. Stepak granted D & K Enterprises an extension of time to complete obligations contained in the Timber Sale Contract (Exhibit 2). This extension was needed due to inclement weather which postponed scheduled timber harvesting. The agreement extended the time to March 15, 1999. A copy of the extension agreement is attached as **Exhibit 4** and is incorporated herein by reference.

8. On or about October 29, 1998, Edward W. Stepak entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Century 21 Mueller Realty Inc. for the sale of his property located at W6485 Hwy. 95, Township of Levis, WI. The listing price was \$39,900.00 and Mueller was the listing broker. Terms of the contract set forth on lines 55 and 56 that the contract was to expire on April 28, 1999. At the time of the listing, Mr. Stepak informed Mueller that there was a contract for the cutting of some trees on his property. Mr. Stepak also informed Mueller that he had granted an extension of time for completion of the cutting. The bottom printed line of page 1 of the Residential Listing Contract-Exclusive Right To Sell agreement reads; "Century 21 Mueller Realty, Inc. 211 E. Division St. Neillsville, WI 54456 ". A copy of the Residential Listing Contract-Exclusive Right To Sell agreement is attached as **Exhibit 5** and is incorporated herein by reference.

9. On or about October 29, 1998, Mr. Stepak prepared a Real Estate Condition Report. This report does not disclose that the property was subject to a Timber Sale Contract (Exhibit 3). Prospective buyer Mary Mashin acknowledged receipt of a copy of the Real Estate Condition Report on November 11, 1998. A copy of the Real Estate Condition Report is attached as **Exhibit 6** and is incorporated herein by reference.

10. On or about November 11, 1998, Century 21 Mueller Realty, Inc., licensee Terry A. Wulff, drafted a Residential Offer to Purchase on behalf of Marlin and Mary Mashin for the W6485 Hwy. 95, property. The offered price was \$35,000.00 with closing to occur no later than December 15, 1998. The offer contained a septic system inspection contingency at Addendum A. Lines 281 and 282 of the Offer indicate Earnest Money Receipt by Terry A. Wulff, C-21 Mueller Realty Inc. The bottom printed line of page 1 of the Residential Offer to Purchase reads; Century 21 Mueller Realty, Inc. 211 E. Division St. Neillsville, WI 54456. Mr. Stepak accepted this Offer on November 13, 1998. A copy of the November 11, 1998, Residential Offer to Purchase with Addenda A and S is attached as **Exhibit 7** and is incorporated herein by reference.

11. On or about November 11, 1998, Wulff, prepared a Disclosure of Real Estate Agency document informing Marlin and Mary Mashin that Century 21 Mueller Realty, Inc., and Terry A. Wulff, were working as "Owner's Agent". This form was signed by Marlin and Mary Mashin on November 11, 1998. The bottom printed line of the Disclosure of Real Estate Agency reads; Century 21 Mueller Realty, Inc. 211 E. Division St. Neillsville, WI 54456. A copy of the Disclosure Of Real Estate Agency form is attached as **Exhibit 8** and is incorporated herein by reference.

12. On or about December 15, 1998, an Amendment/Notice Relating To Offer To Purchase, drafted by Wulff and signed by Mary Mashin changed the closing date from December 15, 1998 to January 2, 1999. This Amendment was prepared because more time was needed to have the septic system inspected. Mr. Stepak did not sign this Amendment. The last printed line at the bottom of the Amendment/Notice Relating To Offer To Purchase reads; Century 21 Mueller Realty, Inc. 211 E. Division St. Neillsville, WI 54456. A copy of the Amendment/Notice Relating To Offer To Purchase dated December 15, 1998, is attached as **Exhibit 9** and is incorporated herein by

reference.

13. On or about January 7, 1999, based on the results of the septic systems inspection indicating that the septic system was not up to code, an Amendment/Notice Relating To Offer To Purchase, drafted by Wulff and signed by Mary Mashin changed the closing date from January 2, 1999, to January 30, 1999. Line 8 of the amendment reads; "seller to pay half of replacement cost of septic system based on being Holding tanks". Mr. Stepak did not sign this Amendment. The bottom printed line of the Amendment/Notice Relating To Offer To Purchase reads; Century 21 Mueller Realty, Inc. 211 E. Division St. Neillsville, WI 54456. A copy of the Amendment/Notice Relating To Offer To Purchase dated January 7, 1999, is attached as **Exhibit 10** and is incorporated herein by reference.

14. Shortly after January 7, 1999, Marlin and Mary Mashin first became aware that the W6485 Hwy. 95 property was then in the process having some of its timber removed under the Timber Sale Contract (Exhibit 3).

15. Mr. Stepak refused to contribute to the cost of replacing the septic system and the transaction failed to close.

16. On or about March 18, 1999, Century 21 Real Estate Corporation again notified Mueller by letter that his Franchise Agreement was terminated and his rights under it were canceled effective January 29, 1998. The notification also again demanded that he immediately cease and desist using the Century 21 registered trademark in any respect. A copy of the March 18, 1999, letter from Century 21 Real Estate Corporation is attached as **Exhibit 11** and is incorporated herein by reference.

17. Mueller has since stopped using the Century 21 Franchise logo and currently does business under the name Mueller Realty Inc.

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. Respondents **Melvyn F. Mueller and Mueller Realty and Auction Service Inc.**, have violated:

a. Wis. Adm. Code sec. RL 24.04(1) and Wis. Stats. sec. 452.14(3)(i), by advertising as a Century 21 franchise after the franchise had been terminated from January 29, 1998, through March 19, 1999.

b. Wis. Adm. Code secs. RL24.025(1), and RL 24.07(2) and Wis. Stats. secs. 452.133(l)(b), 452.133(l)(c) and 452.14(3)(i) by failing to discover and disclose to the Mashin's that Mr. Stepak's property they were buying was subject to a timber sales contract until March 15, 1999.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Melvyn F. Mueller**, license #90-35257, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Mueller Realty and Auction Service**, license #91-834425, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Melvyn F. Mueller**, within six months of the date of this Order, successfully complete the following course module 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 Business Ethics module - section RL 25.02(2)(g), 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 **Melvyn F. Mueller** fails to successfully complete and report the educational requirements within the time and in the manner as set forth above, then and in that

event, and without further notice to **Melvyn F. Mueller** his 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 **Melvyn F. Mueller**, pay partial costs of this matter in the amount of \$250.00, 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 Respondent **Melvyn F. Mueller** fails to pay the \$250.00 partial costs within the time and manner as set forth above, then and in that event, and without further notice to the Respondent **Melvyn F. Mueller**, his real estate broker's 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 his failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that files 99 REB 036 and 99 REB 087 be, and hereby are, closed.

Dated this 26th day of October, 2000.

WISCONSIN REAL ESTATE BOARD

James Imhoff, Jr

A member of the Board