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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

DAVID A. DETTMANN,
RESPONDENT

FINAL DECISION AND ORDER
LS0108142REB

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

David A. Dettmann
5103 Lilac Avenue
Wausau, WI 54401

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. Action Realty Inc., (Action) is licensed as a real estate corporation having State of Wisconsin license number 91-4. This license was first granted to it on January 1, 1970. Action's most recent address on file with the Department of Regulation and Licensing is 928 Grand Avenue, Schofield, WI 54476.
2. **David A. Dettmann** (Dettmann), date of birth 06-08-1961, is licensed as a real estate salesperson having license number 94-29423. This license was first granted to him on September 14, 1988. Dettmann's most recent address on file with the Department of Regulation and Licensing is 5103 Lilac Avenue, Wausau, WI 54401.
3. At all times relevant hereto David A. Dettmann was "employed" by Action as that term is used in chapter 452 of the Wisconsin Statutes.
4. On or about July 31, 1998 Dettmann, on behalf of Action, entered into a WB-1 RESIDENTIAL LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL with Doug Misener and Chrystal Misener for the marketing of a residential single family home then under construction. This property was described therein as Lot 15 Paniolo, Meadow Village Estates in the Town of Kronenwetter, County of Marathon, Wisconsin.
5. On or about July 31, 1998, the Miseners signed a REAL ESTATE CONDITION REPORT that states, in part: "C-24 – Special Assessments still due for city sewer & water. The unpaid balance can be assumed by buyer and paid all

at once, or in smaller monthly payments over a period of time." This REAL ESTATE CONDITION REPORT was attached to the listing contract and made a part of the listing contract by reference.

6. On or about September 4, 1999, real estate broker Yvonne Prey (Prey) of Remax Wausau, acting as a subagent of Action and on behalf of the sellers, drafted a WB-11 RESIDENTIAL OFFER TO PURCHASE for the signature of buyers Eric Donaldson and Sonya L. Donaldson, wherein the Donaldsons offered to purchase the property.

7. On or about September 4, 1999, a copy of the Real Estate Condition Report for the property was sent via fax from Action to Prey and delivered to the Donaldsons by Prey. A copy of this condition report is attached hereto as **Exhibit A**, and incorporated herein by this reference. Also provided to the Donaldsons on or about September 4, 1999, were two advertisements of the property prepared by Dettmann. Both of these advertisements state the listed price of the property as \$108,700.00 without stating that the property is offered at that price, subject to an approximate \$6,000.00 lien for special assessments. A copy of each of these advertisements is attached as **Exhibit B**, and incorporated herein by this reference.

8. The offer states, in part: "Net general real estate taxes shall be prorated based on the estimated amount of \$1,700.00."

9. The offer further states, in part: "Buyers are aware of special assessments for sewer & water on the tax roll for approx 17 years, and agree to assume."

10. The Miseners accepted the Donaldson's offer on September 5, 1999.

11. On or about September 5, 1999, Dettmann drafted a WB-43 AMENDMENT/NOTICE RELATING TO OFFER TO PURCHASE for the signature of the sellers and buyers. This amendment states: "Buyer is aware that property will be assessed for property taxes on or after January 1, 2000, and that property taxes due in the year of completion of new construction is only on the land and not on the improvements. This is a tax advantage to the Buyer. Property taxes will be prorated as usual on the land only, and paid by seller up thru date of closing."

12. Closing of this transaction took place on October 1, 1999. At closing real estate taxes were prorated based upon a net tax of \$150.42, which is the amount of real estate tax billed to the sellers on the property for the previous year (1998).

13. The real estate tax billed to the buyers for the year of closing (1999) turned out to be \$499.10, which was based upon a January 1, 1999 assessment of the property. This assessment included the value of the partially constructed residence.

14. The statement contained in the Amendment drafted by Dettmann representing that the 1999 tax would only be based upon a vacant land assessment is false. Section 70.10 of the Wisconsin Statutes requires that all real property assessors assess real property as of the close of January 1 of each year.

15. During investigation of this matter, Dettmann stated to the investigator for the Department of Regulation and Licensing that he did not know that assessments of real estate which includes a building under construction are to include that portion of new construction completed as of January 1st of each year.

16. At closing, Dettmann represented to the buyers that under the terms of the offer to purchase, buyers were required to not only assume unpaid assessments for sewer and water but they were also required to pay back to the sellers the amounts previously paid on the assessments for the year 1998. In furtherance of this representation, Dettmann included in the closing statement \$752.10 as an amount due seller from buyer. Buyers objected to this payment as not having been agreed to in the purchase contract drafted by seller's agents. At closing Dettmann represented to buyers that the \$752.10 payment to sellers for previously paid special assessments was required under the terms of the purchase contract.

17. Contrary to Dettmann's representations, the purchase contract, including the "amendment" drafted by Dettmann does not state that buyers were to pay over to sellers any amount for previously paid special assessments. Nor does the contract state the dollar amount of special assessments being assumed, even though this amount was known, or should have been known, by Dettmann.

18. During investigation of this matter, Dettmann indicated to the investigator for the Department of Regulation and Licensing that buyers were to pay all special assessments, stating in a letter addressed to the Division of Enforcement: "It had been made clear that ALL water & sewer charges were to be paid by the buyer." (Emphasis in original). Dettmann offered this statement as an explanation of the \$752.10 charge at closing.

19. Contrary to Dettmann's statement, not all water and sewer assessments were charged to the buyers. Two lists of special assessments were obtained from Dettmann during investigation of this matter and are attached hereto as **Exhibit C**. One list shows special assessments on the property commencing in 1993 and the second shows special assessments commencing in 1996. The total of special assessments paid prior to the October 1999 closing was \$2129.22, not \$752.10.

20. Respondent **David A. Dettmann**, license 94-29423, has violated:

- a) Section RL 24.03(2)(c) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to be knowledgeable regarding laws, public policies and current market conditions on real estate matters and failing to assist, guide and advise the buying or selling public based upon these factors, thereby demonstrating incompetency to act as a real estate salesperson in a manner which safeguards the interests of the public.
- b) Section RL 24.08 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to put in writing the exact agreement of the parties relating to financial obligations regarding this transaction, thereby demonstrating incompetency to act as a real estate salesperson in a manner which safeguards the interests of the public.
- c) Sections 452.133(1)(a) and 452.14(3)(L) of the Wisconsin Statutes by failing to provide brokerage services to all parties in the above transaction honestly, fairly and in good faith.
- d) Sections 452.133(1)(b) and 452.14(3)(L) of the Wisconsin Statutes by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties.

ORDER

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

IT IS FURTHER ORDERED, that the real estate license of Respondent **DAVID A. DETTMANN**, license # 94-29423, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **DAVID A. DETTMANN**, within six months of the date of this Order, **successfully complete the entire 72 hour real estate salesperson prelicensing course, set forth in section RL 25.03 of the Wisconsin Administrative Code**, 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. This course may not be taken at an educational institution associated with, operated by, or owned, in full or in part, by Respondent or Action Realty Inc., or Robert G. Rybarczyk.

IT IS FURTHER ORDERED, that in the event Respondent DAVID A. DETTMANN 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 DAVID A. DETTMANN, 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 **DAVID A. DETTMANN**, pay **PARTIAL COSTS** of this matter in the amount of **\$500.00** 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 DAVID A. DETTMANN, fails to pay the \$500.00 partial costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent DAVID A. DETTMANN, his real estate license shall be suspended until the full amount of said costs have been paid to the Department of Regulation and Licensing. Any failure by DAVID A. DETTMANN to timely pay the costs shall be considered a violation of this Order. In addition, the unpaid costs may be collected by the State of Wisconsin pursuant to law.

IT IS FURTHER ORDERED, that case LS 0108142 REB, also know as Division of Enforcement investigative file 00 REB 157 be, and hereby is, closed as to David A. Dettmann.

Dated this 6th day of December, 2001.

WISCONSIN REAL ESTATE BOARD

James Imhoff, Jr.

Chair

