

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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**STATE OF WISCONSIN**

**BEFORE THE REAL ESTATE BOARD**

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**IN THE MATTER OF THE DISCIPLINARY**

**PROCEEDINGS AGAINST:**

**ACTION REALTY INC., and**

**ROBERT G. RYBARCZYK,**

**RESPONDENTS**

**FINAL DECISION AND ORDER**

**LS0108142REB**

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

Action Realty Inc.

928 Grand Avenue

Schofield, WI 54476

Robert G. Rybarczyk

4805 Indigo Drive

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. Robert G. Rybarczyk (Rybarczyk), date of birth 09/08/1962, is licensed in the State of Wisconsin as a real estate broker having license number 90-32813. This license was first granted to him on July 31, 1984. Rybarczyk's most recent address on file with the Department of Regulation and Licensing is 4805 Indigo Drive, Wausau, WI 54401.

3. Rybarczyk is the president and manager of Action and is a "business representative" of Action as that term is used in chapter 452 of the Wisconsin Statutes.
4. 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.
5. At all times relevant hereto David A. Dettmann was "employed" by Action as that term is used in chapter 452 of the Wisconsin Statutes.
6. On or about July 31, 1988 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.
7. 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."
8. On or about September 4, 1999, real estate broker Yvonne 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.
9. The offer states, in part: "Net general real estate taxes shall be prorated based on the estimated amount of \$1,700.00."
10. 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."
11. The Miseners accepted the Donaldson's offer on September 5, 1999.
12. 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."
13. 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).
14. 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.
15. 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.
16. 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 under construction were to include that portion of new construction completed as of January 1<sup>st</sup> of each year. He further stated that his representation to buyers and sellers as set forth in the contract amendment was based upon statements made to him by the Seller. He further stated that his supervisor reviewed the documents for this transaction and did not correct the documents in any way.
17. 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 had included in the closing statement an additional \$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 insisted to buyers that the amount was required under the terms of the purchase contract.
18. 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 and Action.

19. 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.

20. 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 A**. 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.

21. During investigation of this matter, Dettmann disclosed to the Investigator for the Department of Regulation and Licensing that during the above mentioned time period he was directly supervised by real estate salesperson Gary M. Kmiecek and not by a real estate broker employed by Action. The investigator then interviewed Kmiecek. Kmiecek admitted to the investigator that he supervised Dettmann during the Misener to Donaldson transaction and that he did so at the direction of Rybarczyk.

#### MITIGATING CIRCUMSTANCES

22. As mitigation, Robert G. Rybarczyk and Action Realty Inc., have offered to compensate the Donaldsons for both the 1998 special assessments of \$752.10 and the correct prorated portion of the 1999 special assessments. This prorated amount is \$546.19 and is calculated to the day of closing of the above-described transaction. The total of these two amounts is \$1,298.29. A check in this amount, payable to the Donaldsons, is attached to the Stipulation of the parties and will be forwarded to the Donaldsons by the Division of Enforcement upon the Real Estate Board's approval of the Stipulation and the issuance of this Final Decision and Order.

As a further mitigating fact, in January 2000, Robert G. Rybarczyk and Action Realty Inc., recalculated the real estate tax proration for the year of closing based upon the actual tax bill received by the Donaldsons and caused the sellers to pay over to the Donaldsons the sum of \$261.50.

#### CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to section 452.14, Wis. Stats.
2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to section 227.44(5), Wis. Stats.
3. Respondent Robert G. Rybarczyk, license 90-32813, has violated:

Sections RL 17.08(1), 17.08(2) and 17.09(1) of the Wisconsin Administrative Code and sections 452.12(3)(a) and 452.14(3)(i) of the Wisconsin Statutes by failing to appropriately supervise the real estate activities of a David A. Dettmann, a real estate salesperson under his supervision and by delegating supervisory responsibilities to a real estate salesperson and not to a real estate broker.

4. Respondent Action Realty Inc., license 91-4, is subject to discipline pursuant to section 452.14(4) of the Wisconsin Statutes.

#### 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 **ACTION REALTY INC.**, license # 91-4, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that the real estate license of Respondent

**ROBERT G. RYBARCZYK**, license # 90-32813, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that Case LS 0108142 REB, also known as Division of Enforcement investigative file 00 REB 157, be and hereby is, closed as to Action Realty Inc., and Robert G. Rybarczyk and not as to David A. Dettmann.

Dated this 6<sup>th</sup> day of December, 2001.

James Imhoff, Jr.

Chair