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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

ALAN R. ALTERI

RESPONDENT

FINAL DECISION AND ORDER

LS0112062REB

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

Alan R. Alteri

1860 Hickory Hill LN.

Brookfield, WI 53045

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. **Alan R. Alteri** ("Alteri"), date of birth 01/16/61, is licensed in the State of Wisconsin as a real estate broker having license # 90-50092. This license was first granted to him on 01/19/00. Alteri's most recent address on file with the Department of Regulation and Licensing is 1860 Hickory Hill LN., Brookfield, WI 53045.
2. At all times relevant hereto, Alteri was a real estate broker for Shorewest Realtors, Inc. Shorewest Realtors, Inc., license # 91-7771 is headquartered at 17450 W. North Ave., PO Box 942, Brookfield, WI 53045.
3. On or about August 20, 2000, Alteri entered into a BUYER AGENCY/TENANT REPRESENTATION AGREEMENT with prospective buyers Jason T. Patti and Jennifer L. Ciucci which granted Alteri and Shorewest Realtors Inc. the exclusive right to locate an interest in property and to negotiate the procurement of an interest in that property. Lines 14 through 17 of the agreement read: "SUCCESS FEE: 2.400 % of the purchase price or \$1,760.00 or the compensation offered by the listing broker, whichever is greater, if the property is listed in MLS. If the property is not listed in MLS, buyer shall pay a fee equal to the greater of \$4,400.00 or 6% of the agreed price." The terms of the agreement were from August 20, 2000, through November 20, 2000. A copy of the BUYER AGENCY/TENANT REPRESENTATION AGREEMENT is attached as **Exhibit 1** and is incorporated herein by reference.
4. Also on or about August 20, 2000, Alteri prepared a DISCLOSURE OF REAL ESTATE AGENCY WITH CONSENT TO

MULTIPLE REPRESENTATION form which was signed by Patti and Ciucci. At lines 106 and 107 of the form Patti and Ciucci consent to Shorewest Realty and Alteri working in a multiple representation capacity (Disclosed Dual Agency). A copy of the DISCLOSURE OF REAL ESTATE AGENCY WITH CONSENT TO MULTIPLE REPRESENTATION is attached as **Exhibit 2** and is incorporated herein by reference.

5. On or about October 16, 2000, Lori Gonion entered into a RESIDENTIAL LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL agreement with Alteri for the sale of her 3009 & 3011 W. McKinley Blvd., Milwaukee, WI property. The list price was \$180,000.00. Lines 49 and 50 of the listing contract indicate that the commission was to be 6% + \$405.00 with a minimum of \$4,400.00. Line 241 indicates that the agreement was for a One Party Listing for Jason Patti and Jennifer L. Ciucci. Also On or about October 16, 2000, Ms. Gonion signed a DISCLOSURE OF REAL ESTATE AGENCY WITH CONSENT TO MULTIPLE REPRESENTATION form consenting to multiple representation. A copy of the RESIDENTIAL LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL agreement is attached as **Exhibit 3** and is incorporated herein by reference. A copy of the DISCLOSURE OF REAL ESTATE AGENCY WITH CONSENT TO MULTIPLE REPRESENTATION form is attached as **Exhibits 4** and is incorporated herein by reference.

6. Ms. Gonion did not in fact agree to pay a 6% commission as stated on the listing agreement (Exhibit 3) and on October 16, 2000, a side agreement on plain bond paper was signed by Alteri and Ms. Gonion which states: "I, AL ALTERI, AGREE TO LIST LORI GONION'S HOUSE AT 3009-11 W. MCKINLEY BLVD. MILWAUKEE, WISCONSIN AS A ONE PARTY LISTING (WITH THE BUYERS BEING JASON PATTI AND JENNIFER CICUUI) AT 3% PLUS \$405.00 INSTEAD OF 6 %. THIS AGREEMENT VOIDS THE PREVIOUS AGREEMENT OF 6 %". A copy of this agreement is attached as **Exhibit 5** and is incorporated herein by reference.

7. On or about October 15, 2000, Alteri drafted a RESIDENTIAL OFFER TO PURCHASE document on behalf of Jason Patti and Jennifer L. Ciucci for the 3009 & 3011 W. McKinley Blvd. property. The offered price was \$168,000.00 with closing to occur no later than November 10, 2000. Lines 183 - 185 read: "Seller Agrees to pay 4 % of the purchase price to the Buyers Broker on behalf of the Buyer. This fee is paid as an economic adjustment in this transaction". A copy of the October 15, 2000, RESIDENTIAL OFFER TO PURCHASE is attached as **Exhibit 6** and is incorporated herein by reference.

8. On October 16, 2000, Ms. Gonion countered the Offer (Exhibit 6) with a purchase price of \$176,000.00. This Counter-Offer was drafted by Alteri. Lines 3 and 4 of the Counter-Offer state: ... "All terms and conditions remain the same as stated in the Offer To Purchase except the following: " The three areas then addressed at lines 7-15 of the Counter-Offer do not alter the 4% commission at lines 183-185 of the Offer (paragraph 7), which in effect constitutes acceptance of a 4% commission by Gonion. This Counter-Offer was accepted by Patti and Ciucci on October 18, 2000. A copy of the Counter-Offer and acceptance is attached as **Exhibit 7** and is incorporated herein by reference.

9. On or about November 10, 2000, the transaction closed. The Closing Statement produced by Shorewest Realtors shows the brokerage commission being paid by Gonion to Shorewest Realtors as \$5,685.00 (3% + \$405.00). A copy of the Closing Statement is attached as **Exhibit 8** 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 **Alan R. Alteri** has violated:

a. Sections RL 16.04(1), RL 16.06(8) and RL 24.08 of the Wisconsin Administrative Code and sections 452.14(3)(i) and 452.14(3)(m) of the Wisconsin Statutes by failing to express the exact agreement of the parties, as to commission, on the October 16, 2000, Residential Listing Contract-Exclusive Right To Sell document (Exhibit 3) and by attempting to amend that agreement by use of an unapproved form (Exhibit 5).

b. Sections RL 16.06(8) and RL 24.08 of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to express the exact agreement of the parties on the October 15, 2000, Residential Offer to Purchase (Exhibit 6) and October 16, 2000, Counter-Offer (Exhibit 7) as it relates to the amount of commission to be paid Alteri by Gonion.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Alan R. Alteri**, license #90-50092, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Alan R. Alteri**, 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 Contracts module-section RL 25.02(2)(a), of the Wisconsin Administration Code and,
- b. The Approved Forms module-section RL 25.02(2)(b), of the Wisconsin Administration Code and,
- c. The Business Ethics module-section RL 25.02(2)(g), of the Wisconsin Administration 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 **Alan R. Alteri** 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 **Alan R. Alteri**, 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 **Alan R. Alteri**, pay **PARTIAL COSTS** in this matter in the amount of a \$300.00, 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 **Alan R. Alteri** fails to pay the \$300.00 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 **Alan R. Alteri**, his 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 his failure to pay the partial costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that file 01 REB 014 be, and hereby is, closed.

Dated this 6th day of December, 2001.

WISCONSIN REAL ESTATE BOARD

James Imhoff, Jr.

A member of the Board