

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

RITA L. DUCAINE

RESPONDENT

FINAL DECISION AND ORDER

LS0202281REB

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

Rita L. Ducaine

N8150 Smith Creek Rd.

Crivitz, WI 54114

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. **Rita L. Ducaine** ("Ducaine"), date of birth 11/27/44, is licensed in the state of Wisconsin as a real estate broker having license # 90-48923. This license was first granted to her on 04/08/97. Ducaine's most recent address on file with the Department of Regulation and Licensing is N8150 Smith Creek Rd., Crivitz, WI 54114. At all times relevant to the facts contained herein Ducaine was the broker for a real estate firm d/b/a/ Century 21 Log Home Realty located at N6220 HWY. 141, Crivitz, WI 54114.

2. On or about May 30 and July 25, 2001, Gene Kleinert, an auditor with the Department of Regulation and Licensing, conducted an audit of Century 21 Log Home Realty's trust account records and transaction files. During the audit Mr. Kleinert found discrepancies in Century 21 Log Home Realty's office bookkeeping system and transaction files, as follows:

BOOKKEEPING DISCREPANCIES

a. Certain journal entries failed to list the name of the party submitting earnest money. Those entries are dated April 7, 1999, April 11, 2000, (three entries) and June 12, 2000. Copies of the applicable journal pages are attached as **Exhibit 1** and are incorporated herein by reference.

b. No journal entry was recorded for the \$300.00 earnest money received from John Janusak on October 15, 1999, in conjunction with an October 2, 1999, Residential Offer to Purchase he submitted for property owned by Harry and Carol Goltz. This Offer was accepted by Harry Goltz on October 3, 1999, but the transaction never closed. This money was disbursed to the sellers by Ducaine on March 16, 2001, over 15 months after the transaction was supposed to close. A Copy of the Residential Offer To Purchase with Earnest Money Receipt is attached as **Exhibit 2** and is incorporated herein by reference. A copy of the applicable journal page for 1999 is attached as **Exhibit 3** and is incorporated herein by reference. A copy of check # 1084 made out to Carol and Harry Goltz dated March 16, 2001, is attached as **Exhibit 4** and is incorporated herein by reference.

c. The auditor found no evidence of a required ledger system having been maintained from January 1, 1999, through December 31, 2000.

d. The auditor found no evidence of any monthly account reconciliations, trial balances, or validations having been performed from January 1, 1999, through July 25, 2001.

TRANSACTION FILES

e. On or about October 7, 2000, Kelly Ducaine, a salesperson for Century 21 Log Home Realty, drafted a COUNTER-OFFER 1 on behalf of sellers Harry and Carol Goltz. The COUNTER-OFFER form used had a mandatory use date of 01/01/92. On or about October 10, 2000, Ducaine drafted COUNTER-OFFER 2, for the same transaction, on behalf of buyers Russell and Carol Schenk. The COUNTER-OFFER form that Ducaine completed had a mandatory use date of 01/01/92. The Department of Regulation and Licensing had previously issued a new COUNTER-OFFER form with an "optional use" date of 07/01/99 and a "mandatory use" date of 01/01/00. A copy of the October 7, 2000, COUNTER-OFFER 1 is attached as **Exhibit 5** and is incorporated herein by reference. A copy of the October 10, 2000, COUNTER-OFFER 2 is attached as **Exhibit 6** and is incorporated herein by reference.

f. On or about July 27, 2000, W. E. and Lynette Larson entered into a VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL agreement with Ducaine for the sale of their property located in the town of Middle Inlet, WI. The VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL form that Ducaine completed showed a mandatory use date of 4/7/95. Prior to July 27, 2000, the Department of Regulation and Licensing had approved a new VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL form with an "optional use" date of 07/01/99 and a "mandatory use" date of 01/01/00. A copy of the July 27, 2000, VACANT LAND LISTING CONTRACT-EXCLUSIVE RIGHT TO SELL document is attached as **Exhibit 7** 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 **Rita L. Ducaine** has violated:

a. Sections RL 18.13(1)(a), RL 18.13(2), RL 18.13(3), RL 18.13(4), RL 18.13(5) and RL 24.17(3) of the Wisconsin Administrative Code and section 452.14(3)(i) of the Wisconsin Statutes by failing to depict in the April 7, 1999, April 11, 2000, and June 12, 2000, journal entries the name of the party giving earnest money, by failing to enter the \$300.00 earnest money received from John Janusak in the journal, by failing to maintain a ledger system from January 1, 1999, through December 31, 2000, and by failing to perform monthly reconciliations, trial balances and validations from January 1, 1999, through July 25, 2001.

b. Sections RL 16.06(7), and RL 17.08(1) of the Wisconsin Administrative Code and sections 452.14(3)(i) and 452.14(3)(m) of the Wisconsin Statutes by failing to use current approved real estate forms and by failing, through inadequate supervision, to ensure the use of current approved real estate forms by employees.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Rita L. Ducaine**, license # 90-48923, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Rita L. Ducaine**, 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. Contracts-module RL 25.02(2)(a).
- b. Approved Forms-module RL 25.02(2)(b).
- c. Trust Accounts, Escrow, Closing Statement-module RL 25.02(2)(c).
- d. Financial and Office Management-module RL 25.02(2)(e).
- e. Business Ethics-module RL 25.02(2)(g).

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 **Rita L. Ducaine** 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 **Rita L. Ducaine**, her 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 **Rita L. Ducaine**, pay partial costs of this matter in the amount of \$750.00, within 60 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 **Rita L. Ducaine** fails to pay the \$750.00 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 **Rita L. Ducaine**, her 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 costs have been paid to the Department of Regulation and Licensing and her failure to pay the costs shall be considered a violation of this Order of the Board.

IT IS FURTHER ORDERED, that files 97REB280, 99REB104, 00REB020, 00REB155, 01REB086 & 01REB231 be, and hereby are, closed.

Dated this 28th day of February, 2002.

WISCONSIN REAL ESTATE BOARD

Nancy Gerrard

A member of the Board