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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY

PROCEEDINGS AGAINST:

BELVA M. PARR REALTY, INC.,

and WILLARD C. PARR,

RESPONDENTS

FINAL DECISION AND ORDER

LS0204252REB

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

Belva M. Parr Realty Inc., License Number 91-833176

700 South Main Street

Adams, Wisconsin 53910

Willard C. Parr, License Number 90-40235

332 North Vincennes Street

Adams, Wisconsin 53910

Wisconsin Real Estate Board

P.O. Box 8935

Madison, Wisconsin 53708

Department of Regulation and Licensing

Division of Enforcement

P.O. Box 8935

Madison, Wisconsin 53708

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. **Belva M. Parr Realty Inc.**, (Belva) is licensed as a real estate corporation having State of Wisconsin license number 91-833176. This license was first granted to it on March 12, 1985. Belva's most recent address on file with the Department of Regulation and Licensing is 700 South Main Street, Adams, WI 53910.
2. **Willard C. Parr** (Parr), date of birth September 16, 1947, is licensed in the State of Wisconsin as a real estate broker having license number 90-40235. This license was first granted to him on March 3, 1987. Parr's most recent address on file with the Department of Regulation and Licensing is 332 North Vincennes Street, Adams, WI 53910.

3. Parr is the president and manager of Belva and is a "business representative" of Action as that term is used in chapter 452 of the Wisconsin Statutes.

4. Barbara L. Masche (Masche), date of birth August 13, 1942, is licensed as a real estate salesperson having license number 94-43760. This license was first granted to her on July 21, 1995. Masche's most recent address on file with the Department of Regulation and Licensing is 336 Highway 13 South, Nekoosa, WI 54457.

5. At all times relevant hereto Masche was "employed" by Belva as that term is used in chapter 452 of the Wisconsin Statutes. At all times relevant hereto Masche was supervised by Parr.

6. On or about April 4, 2001 Masche, on behalf Belva, drafted a WB-36 BUYER AGENCY REPRESENTATION AGREEMENT for the signature of buyers John E. Flodstrom and Esther R. Flodstrom. A copy of this agreement is attached hereto as **Exhibit A** and is made a part of this document by this reference.

7. This Buyer Agency Representation Agreement created a principal-agent relationship between the Flodstroms and Belva wherein Belva agreed to act as the exclusive buyer's agent for the Flodstroms. The contract states, in part:

"BROKER'S AUTHORIZATION: Buyer . . . gives Broker the exclusive right to act as Buyer's agent to locate an interest in property and to negotiate the procurement of an interest in property . . ."

At lines 146-147, the contract states the Belva's compensation as follows:

"Buyers agent will receive a commission from the regular commission split of 40% as per regular commission agreement."

8. On or about April 4, 2001, Masche showed the Flodstroms residential property owned by Arvey H. Smith and Arlene M. Smith and listed for sale with Tri-Lakes Realty of Nekoosa, Wisconsin. In preparation for this showing, Masche contacted Carol Lawson a licensed broker with the Tri-Lakes Realty office. Masche did not disclose to Lawson that Masche was acting as a buyer's agent on behalf of the Flodstroms. When Masche picked up the door key to the property from the Tri-Lakes Realty office, she did not disclose her buyer's agency. Masche held the showing of the property without disclosing her buyer's agency status to anyone at Tri-Lakes Realty.

9. On or about April 4, 2001, Masche drafted for the signature of the Flodstroms a WB-11 RESIDENTIAL OFFER TO PURCHASE wherein the Flodstroms offered to buy the Smith property. A copy of this offer is attached as **Exhibit B** and is made a part of this document by this reference.

10. The Smith property was advertised on the local Multiple Listing Service (MLS). A copy of the MLS information sheet is attached hereto as **Exhibit C** and is made a part of this document by this reference.

11. The commission split terms advertised on the MLS sheet indicates that a buyer's broker would receive "0%" commission and a seller's broker receive 2.4% commission split.

12. The April 4, 2001 offer to purchase (Exhibit B) prepared by Masche failed to indicate at line number one whether the broker drafting the offer is agent of the seller, agent of the buyer or a dual agent. The offer did have attached to it a copy of the Buyer Agency Representation Agreement (Exhibit A)

13. Once the Flodstroms had signed the offer, Masche delivered the offer to Tri-Lakes Realty and it was reviewed by Debra Feaster, the Broker/Owner of Tri-Lakes Realty and by Michael Tomsyck, the Tri-Lakes Realty broker who had written the listing.

14. Feaster noted that Masche had failed to indicate who she represented on the first page of the offer and noted the attached a WB-36 BUYER AGENCY REPRESENTATION AGREEMENT. When Masche had shown the property she had not disclosed to Tri-Lakes Realty that she was acting as a buyer's agent. Feaster also noted that the buyer agency contract referred to a commission split. However, no commission was being offered to buyer's broker.

15. On April 4, 2001 Feaster phoned Parr for the purpose of discussing the agency question and the commission question. Parr acknowledged to Feaster that his firm was engaged as an exclusive buyer's agent for the Flodstroms. Feaster informed Parr no commission was offered to Parr's firm because it was acting as a buyer's agent and pointed out to Parr that this information was stated on the MLS sheet.

16. On April 4, 2001, Parr told Feaster that he would have Masche submit a new page one of the offer showing that Belva and Masche would now be a "seller's agent".

17. On April 4, 2001 Masche faxed a copy of the original page one of the Flodstrom offer after modifying it at line one to represent that she now was an "AGENT OF SELLER". A copy of this modified page one is attached hereto as **Exhibit D** and is made a part of this document by this reference.

18. At no time material hereto did Belva, Parr or Masche place into a written document, signed by the Flodstroms and by a representative of Belva, any modification of the buyer's agency contract attached hereto as Exhibit A.

19. The faxed second offer (Exhibit D) was not signed by the Flodstroms after the agency language changes were made by Masche.

20. The sellers rejected both Flodstroms offers dated April 4, 2001 on April 7, 2001.

21. On or about April 6, 2001, Masche drafted a third offer to purchase for the signature of the Flodstroms. On this offer she indicated that she is the AGENT OF BUYER. Masche delivered this third offer to purchase via fax to Tri-Lakes Realty with a cover memo stating, in part:

"John and Esther are submitting a new Full Price Case Offer with No Contingencies on the home without the extra lot"

A copy of this fax with third offer to purchase is attached hereto as **Exhibit E** and is made a part of this document by this reference.

22. Contrary to Masche's statement regarding no contingencies, the Flodstrom offer, at lines 317-318 contained the following contingency language regarding payment of a buyer agency fee:

"This offer is contingent upon the seller reimbursing the buyer \$5,064.00 for buyer agency fee or this offer is null and void."

23. The Smiths rejected this third offer and sold the property to another purchaser.

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 **Willard C. Parr**, License Number 90-40235, has violated:

a) Sections 452.14(3)(i) and 452.14(3)(k) of the Wisconsin Statutes, by participating in the misrepresentation of agency as described herein which conduct constitutes improper, fraudulent or dishonest dealing. Such conduct further violates section RL 24.03(2)(d) that requires licensees to act to protect the public against fraud, misrepresentation and unethical practices.

b) 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 described transaction honestly, fairly and in good faith.

c) 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 brokerages services to the parties in the above described transaction.

d) Section 452.14(3)(i) of the Wisconsin Statutes, and sections RL 17.08(1) and 17.08(2) of the Wisconsin Administrative Code by failing to appropriately supervise the real estate activities of Barbara L. Masche, a real estate salesperson under his supervision.

4. Respondent **Belva M. Parr Realty Inc.**, has violated the following:

a) Section 452.14(3)(k) of the Wisconsin Statutes by participating, through the conduct of its President and managing broker Willard C. Parr and the conduct of its employee Barbara L. Masche, in the misrepresentation of agency status as described herein which conduct constitutes improper, fraudulent or dishonest dealing.

b) Sections 452.133(1)(a) and 452.14(3)(L) of the Wisconsin Statutes by failing through the acts of its President, managing broker and employee, to provide brokerage services to all parties in the above described transaction honestly, fairly and in good health.

c) Sections 452.133(1)(b) and 452.14(3)(L) of the Wisconsin Statutes by failing through the acts of its President, managing broker and employee, to diligently exercise reasonable skill and care in providing brokerages services to the parties in the above described transaction.

5. Respondent **Belva M. Parr Realty Inc.**, License Number 91-833176, is also subject to discipline pursuant to sections 452.12(3) and 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 Belva M. Parr Realty Inc.**, License Number 91-833176, is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that the real estate license of Respondent **Willard C. Parr**, License 90-4023 is hereby **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Willard C. Parr**, License 90-40235 pay a **FORFEITURE of Four Thousand Dollars (\$4,000.00)**, within thirty days of the date of this Order. Payment of this forfeiture shall be made payable to the Wisconsin Department of Regulation and Licensing and mailed or delivered to the Department at PO Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event Respondent Willard C. Parr, License 90-40235, fails to pay the \$4,000.00 forfeiture within the time and in the manner as set forth above, his real estate broker's license shall be immediately suspended, without further notice, hearing or Order of the Board, and said suspension shall continue until the full amount of said forfeiture have been paid to the Department of Regulation and Licensing, and his failure to pay the forfeiture shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED, that Respondent **Willard C. Parr**, License 90-40235, pay partial **COSTS of Six Hundred Dollars (\$600.00)**, 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 Willard C. Parr, License 90-40235, fails to pay the \$600.00 costs within the time and in the manner as set forth above, then and in that event, and without further notice to the Respondent Willard C. Parr, License 90-40235, 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 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 Respondent **Willard C. Parr**, License 90-40235, within six months of the date of this Order, **successfully complete the Broker's Pre-licensing Program consisting of no less than 36 hours as described in section RL 25.02 of the Wisconsin Administrative Code**. He shall 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 Willard C. Parr, License 90-40235 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 Willard C. Parr, 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 investigative file 01 REB 209 be, and hereby is, closed as to all respondents except Barbara L. Masche.

Dated this 25th day of April, 2002.

WISCONSIN REAL ESTATE BOARD

By: James Imhoff, Jr.