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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
: **FINAL DECISION AND ORDER**
ARNOLD R. WITTENBURG : **LS0309251REB**
D/B/A WITTENBURG REALTY, :
RESPONDENT. :

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

Arnold R. Wittenburg
d/b/a Wittenburg Realty
315 Woodlands Ct.
Hartland, WI 53029

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

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

- Arnold R. Wittenburg** (Wittenburg), date of birth 12-19-39, is licensed in the State of Wisconsin

as a real estate broker having license #90-40558 and is doing business as Wittenburg Realty. This license was first granted to him on 04-27-87. Wittenburg's most recent address on file with the Department of Regulation and Licensing is 315 Woodlands Ct., Hartland, WI 53029.

2. On or about April 10, 2001, Wittenburg drafted an Offer to Purchase as a buyer's agent for Volker Rothgerber (Rothgerber) for property owned by Julie Ann Wurst (Wurst) at 616 Center Street, Hartford, WI (Property). A copy of the Offer to Purchase is attached hereto and incorporated herein by reference as **Exhibit 1**.

3. Wittenburg is Wurst's father.

4. The Offer to Purchase as originally drafted failed to include all terms and conditions, including the failure to notice that Wittenburg is Wurst's father, it did not allow for an inspection, and it did not include Addendum A or S. As a result, Wurst's listing agent, Renea Thimm (Thimm) prepared a Counter Offer in an attempt to resolve those discrepancies. A copy of the Counter Offer is attached hereto and is incorporated herein by reference as **Exhibit 2**.

5. At the time Wittenburg drafted the Offer to Purchase, he did not have a buyer's agency agreement with Rothgerber. After Thimm inquired as to Wittenburg's agency, Wittenburg produced a buyer's agency agreement, which is dated after the Offer to Purchase was made. A copy of the Buyer's Agency Agreement is attached hereto and is incorporated herein by reference as **Exhibit 3**.

6. This transaction did not close.

7. On June 28, 2001, Wurst transferred the Property to Wittenburg. The Offer to Purchase which was drafted by Wittenburg failed to include all terms and conditions, including Addendum A or S, and failed to note who drafted the Offer. A copy of Wittenburg's Offer to Purchase for the Property as a buyer is attached hereto and is incorporated herein by reference as **Exhibit 4**.

8. On July 3, 2001, Rothgerber made another Offer to Purchase on the Property. Wittenburg also drafted this Offer to Purchase. The Offer to Purchase does not disclose that Wittenburg was the owner of the property. A copy of the Offer to Purchase as provided by Wittenburg is attached hereto and is incorporated herein by reference as **Exhibit 5**.

9. On August 28, 2001, Wittenburg drafted an Amendment to Offer to Purchase for Rothgerber. The WB-43 form Wittenburg used became invalid for use after January 1, 2000. A copy of the Amendment to Offer to Purchase is attached hereto and is incorporated herein by reference as **Exhibit 6**.

10. Investigative requests were made by Investigator Kelley Sankbeil for the Department of Regulation and Licensing as a result of an informal complaint made against Wittenburg. In response to a request for trust account records, Wittenburg provided a statement stating that he did not "enter anything into a journal and reconstruction journal." A copy of Wittenburg's statement is attached hereto and is incorporated herein by reference as **Exhibit 7**.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter pursuant to §452.14, Wis. Stats.

2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to §227.44(5), Wis. Stats.

3. Respondent **Arnold R. Wittenburg d/b/a Wittenburg Realty** has violated:

- a. §24.08, Wis. Adm. Code by failing to put in writing all financial obligations and other commitments regarding these transactions and expressing the exact agreement of the parties.
- b. §RL 24.07(8)(a)1, Wis. Adm. Code and §452.135(1), Wis. Stats. by failing to have a buyer's agency agreement in place prior to providing brokerage services to Rothgerber.
- c. §RL 24.05(2), Wis. Adm. Code by failing to disclose his interest in the Property to Rothgerber.
- d. §RL 16.04(1), Wis. Adm. Code and §452.14(3)(m), Wis. Stats. by failing to use approved forms when acting as an agent or a party in a real estate transaction.
- e. §18.13, Wis. Adm. Code, by failing to maintain the required bookkeeping and journal for these transactions.
- f. §452.14(3)(i), Wis. Stats. by demonstrating incompetency for violating §RL 16.04(1), Wis. Adm. Code and §18.13, Wis. Adm. Code.
- g. §452.14(3)(L), Wis. Stats. for the aforementioned violations of Chapter 452, Wis. Stats.

ORDER

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

IT IS FURTHER ORDERED that the **VOLUNTARY SURRENDER** of **Arnold R. Wittenburg d/b/a Wittenburg Realty's** real estate broker's license, #90-40558, is hereby accepted, effective on the date this Order is signed below.

IT IS FURTHER ORDERED that file 01 REB 289 shall be and hereby is closed.

Dated this 25th day of September, 2003.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger

A member of the Board