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BEFORE THE REAL ESTATE BOARD

DOE Investigative Files 00 REB 274, 01 REB 245

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 Real Estate Board ("Board"). The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached *Stipulation* and makes the following:

FINDINGS OF FACT

1. **Burnet Realty, Inc., d/b/a Coldwell Banker** (hereinafter referred to as "Burnet Realty"), is and was at all times relevant to the facts set forth herein, a real estate business entity licensed in the State of Wisconsin, pursuant to license # 833997, originally granted on July 31, 1990.

2. **Robert Nicholson**, (hereinafter referred to as "Nicholson"), is and was at all times relevant to the facts set forth herein, a real estate broker licensed to practice in the State of Wisconsin pursuant to license # 49779, originally granted on March 19, 1999.

3. **Willard A. Seiffert** (hereinafter referred to as "Seiffert"), is and was at all times relevant to the facts set forth herein, a real estate salesperson licensed to practice in the State of Wisconsin pursuant to license # 26689, originally granted on April 28, 1987.

4. **Earl L. Mielke** (hereinafter referred to as "Mielke"), is and was at all times relevant to the facts set forth herein, a real estate salesperson licensed to practice in the State of Wisconsin pursuant to license # 42416, originally granted to him on December 18, 1994.

5. At all times relevant hereto and in regard to the transactions described herein, Respondents Seiffert, Mielke and Swan are and were employed as real estate salespersons for Burnet Realty in Hudson, Wisconsin.

6. Respondent Burnet Realty is a "branch" office as defined in Section RL 17.02(1) Wis. Adm. Code. The principal office of Burnet Realty, as defined in RL 17.02(4), Wis. Adm. Code, is located in Stillwater, Minnesota.

7. Respondent Nicholson is, and was at all times relevant to the facts set forth herein, the supervising broker for the Burnet Realty offices in Hudson and Stillwater. Nicholson supervises thirty (30) agents in the Stillwater office and twelve (12) agents in the Hudson office.

00 REB 274

8. Heidi Mangelsen (hereinafter referred to as "buyer") filed a complaint with the Department alleging misrepresentation and unprofessional conduct by Seiffert in connection with her purchase of investment property in April 2000.

9. The property consisted of an older home in Hudson, Wisconsin, which Seiffert had advertised as available for "zero" down. The buyer and her husband were interested in acquiring "income property" for investment and contacted Seiffert.

10. Seiffert met with the buyers and discussed cost projections for the property, including interest rates, mortgage payment and rental value. Seiffert told the buyers that he was a landlord and that he was familiar with the rental market in the area.

11. Seiffert told the buyers that they could expect have a cash flow or a "break even" if they used the property as a rental. Based upon his representations, the buyers made an offer on the property.

12. The Property Condition Report was prepared by Seiffert on behalf of the seller to indicate that the owner had lived on the property for two months. The report did not disclose that seller had taken the house "on trade" from a customer and had never actually lived on the property.

13. Seiffert had done business with the seller over a fourteen year period and was familiar with his practice of buying properties or taking them in trade for new home construction and then listing the property with Seiffert for resale.

14. The Offer to Purchase was drafted by Seiffert as a dual agent for the buyers and sellers. Seiffert and the buyers did not enter into a buyers' agency contract.

15. Seiffert told the buyers that he had a friend at Northern Mortgage Company who could arrange for 100 percent financing at a reasonable rate. The buyers contacted the lender that was recommended by Seiffert.

16. Seiffert told the buyers that the lender required that they rewrite the offer in order for them to gain loan approval.

17. When Seiffert rewrote the offer, he changed the closing date, increased the amount of closing costs paid by the seller and inserted the term "non-conforming" and "market rate" in the financing contingency.

18. The financing contingency drafted by Seiffert failed to specify the loan program or source of the purchase funds. The contingency also failed to specify the maximum monthly payment of principal and interest.

19. The financing contingency prepared by Seiffert did not provide for an upper limit or "cap" on the loan interest rate. Lines 161 and 162 of the contingency were left completely blank.

20. Seiffert did not include a limit on the maximum monthly payment of interest and principal payable under either fixed rate or adjustable rate financing.

21. After re-drafting the offer, Seiffert directed the buyers to back date the revised version.

22. The buyers found that they could not obtain full financing at an interest rate, as Seiffert had represented, that would result in a monthly payment equal to the amount of rent they could obtain for the property.

23. The buyers told Seiffert that they wanted to withdraw their offer because they could not afford the property. Seiffert responded that were obligated to close because their offer had been accepted.

24. The buyers went to two attorneys seeking legal advice as to whether they could withdraw their offer based upon the financing contingency.

25. The attorneys advised that they could not withdraw their offer based upon how the financing contingency offer was drafted.

26. In order to close on the property, the buyers had to take out a second mortgage on their existing home and the rent from the property did not cover their mortgage payments.

27. After closing on the transaction, a complaint was filed with the Ethics Hearing Panel of the Western Wisconsin Realtors Association.

28. The Ethics Panel found that Seiffert had failed to provide proper and timely agency disclosure to the buyers, that he had the buyers sign the Consent to Multiple Representation at the time that the Offer was drafted and not at the first meeting, and that he had made conflicting agency representations during the transaction and misrepresented that the seller had lived on the property.

29. The Ethics Panel imposed discipline against Seiffert and placed a letter of warning in his file and required that he attend an "agency" training class.

01 REB 245

30. On September 14, 2001, Irene Winter filed a complaint with the Department alleging that Earl L. Mielke made various misrepresentations in regard to one of his listings, which she and her husband purchased through Burnet Realty in October 2000.

31. The property consisted of a vacant lot in a rural subdivision in Somerset, Wisconsin, which was originally for sale by owner.

32. Mielke contacted the owners and asked if they would like his assistance in selling the property. The sellers entered into an exclusive contract with Mielke and Burnet Realty on July 17, 2000.

33. On or about August 2000, the buyers were driving through the area and saw the lot with Mielke's sign on it. The buyers were from California, had just retired, and were interested in building a home in the area.

34. On several occasions, the buyers suggested that they would like to meet Mielke to discuss the property, but Mielke was never available. Mielke told the buyers that he could send them information about the property and everything could be handled by telephone or fax because he was very busy.

35. Mielke did not offer to show the property to the buyers or offer to accompany them when they viewed the property.

36. After receiving information from Mielke and viewing the property themselves, the buyers told Mielke that they would like to make an offer.

37. On August 17, 2000, Mielke drafted the WB-13 Vacant Land Offer to Purchase. The offer form indicates that Mielke was acting as a dual agent for the sellers and buyers. Mielke did not prepare a separate buyer's agency contract with respect to the dual agency.

38. Mielke mailed the original contract to the buyers and faxed only pages one and four. When the Offer was accepted, the buyers only received the signature pages by fax from Mielke and not the complete document.

39. The Offer to Purchase included Addendum A which provided that the offer was contingent upon the seller providing a certified survey map of the property, a perk test demonstrating that property was suitable for a conventional septic system and written verification of the availability of electricity and gas utility connections on the property.

40. Prior to closing, the buyers again asked Mielke to verify whether natural gas was available to the property since they had observed propane tanks on the adjacent lots. The buyers explained that there concerned about the cost of utilities and wanted to be sure that natural gas was available.

41. Mielke assured the buyers that there was natural gas available in the subdivision.

42. Mielke's representations about the features of the property were based upon the information he received from the sellers. At the time of the listing, Mielke prepared the "spec" sheet for the sellers to sign.

43. The sellers had only owned the property for approximately one year and did not have the original paperwork from the developer with them when they discussed the property.

44. All of the information obtained for the listing was based upon the initial meeting at his office when they signed the listing contract. Mielke never inspected or examined the property with the sellers

45. Mielke did not contact the sellers after they signed the listing with additional questions about the property.

46. Mielke never discussed or mentioned the possibility of dual agency with the sellers when they entered into the listing contract.

47. Prior to making an offer, the buyers asked Mielke again if he was certain that the property had natural gas. They told Mielke they were concerned because they had noticed that some of the homes in the subdivision had tanks in the yard.

48. Mielke again assured the buyers that the lot had natural gas.

49. Mielke did not check with the developer or the local authorities to find out if natural gas was available.

50. After the offer was accepted, the buyers asked Mielke about the other contingencies such as the delivery of a certified survey map and the placement of corner markers.

51. Mielke told the buyers that he had personally marked and flagged the corners of the property so they did not have to worry about receiving a copy of the certified survey map before closing.

52. The buyers agreed to close based upon Mielke's assurances. After closing on the property, they discovered that the property did not have natural gas because the gas line has not been extended to the subdivision.

53. When the buyers were ready to build, they were unable to locate the corner markers on the property and discovered that the septic location had to be redone because the original site was at a higher elevation and code changes required deeper borings.

54. The buyers have never received a copy of the certified survey map which Mielke claimed was sent to them.

MITIGATING FACTORS

55. As evidence of mitigation, the Respondent Burnet Realty, has voluntarily agreed to hire associate brokers for its branch offices in Wisconsin within one hundred twenty days (120) days from the effective date of this order. The associate brokers shall be available on-site to supervise the licensees in the branch offices whenever the primary supervising broker is unavailable.

56. As further evidence of mitigation, the Respondent Burnet Realty, has voluntarily agreed to refund five thousand dollars (\$5,500.00) to La Casse Homes, Inc., which represents the sum that was erroneously paid to Burnet Realty sales agent. A true and correct copy of proof of the Burnett payment is attached and incorporated herein as **State's Exhibit A**.

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 **BURNET REALTY, INC.** has violated sec.452.12 (3)(a), Wis. Stats., which provides that each broker is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker.

4. Respondent **BURNET REALTY, INC.** has violated sec. RL 17.08(2) Wis. Admin. Code, which provides that a broker-employer shall be responsible for the preparation, custody, safety and correctness of all entries on real estate forms, closing statements and other records even though another person may be assigned

the duties by the broker-employer.

5. Respondent **ROBERT NICHOLSON** has violated sec. 452.12(3)(a), Wis. Stats., which provides that each broker is responsible for the acts of any broker, salesperson or time-share salesperson employed by the broker, and has violated sec. 452.14(3)(i) Wis. Stats., by failing to adequately supervise the salespersons referenced in the findings herein.

6. Respondent **WILLARD SEIFFERT** has sec. RL 24.03(2)(b) Wis. Admin. Code, which provides that licensees shall be knowledgeable regarding laws public policies and current market conditions on real estate matters and assist, guide, and advise the buying and selling public based upon these factors. Respondent Seiffert has also violated sec. RL 24.07(8), Wis. Admin. Code, by failing to have agency agreement with the buyers prior to providing brokerage services to them and by failing to provide agency disclosure properly and in a timely manner.

7. Respondent **EARL MIELKE** has violated sec. RL 24.07(1) Wis. Admin Code, and sec. RL 24.07(3), Wis. Admin. Code, by failing to disclose material adverse facts in the practice of real estate.

ORDER

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

IT IS ORDERED, that Respondent **WILLARD SEIFFERT (Lic. No. # 26689)** shall be **SUSPENDED** for seven (7) days and pay a forfeiture of \$500.00 within sixty (60) days from the effective date of this order. Within six (6) months of the date of this Order, Respondent shall successfully complete the following real estate salesperson's course at an educational institution approved by the Department of Regulation and Licensing:

1. Real Estate Finance and Appraisal Market Analysis modules of the Real Estate Salesperson Pre-Licensure Program pursuant to RL 25.03(3)(j) and(k);

IT IS FURTHER ORDERED that **WILLARD SEIFFERT** shall be subject to a period of supervision for one (1) year by his broker beginning on the effective date of this order. During the period of supervision, his broker must submit quarterly work reports verifying that any gent's real estate sales transactions handled by Seiffert have been reviewed and are in conformity to the ethical conduct and practice rules for licensees.

IT IS FURTHER ORDERED that Respondent **EARL MIELKE (Lic. No. # 42416)** is **REPRIMANDED** and pay a forfeiture of \$500.00 within (60) days of the effective date of this order. Within six (6) months of the date of this Order, shall successfully complete the following real estate salesperson's course at an educational institution approved by the Department of Regulation and Licensing:

1. The Real Estate Contracts module of the Real Estate Salesperson Pre-Licensure Program pursuant to RL 25.03(3)(h).

IT IS FURTHER ORDERED that **ROBERT NICHOLSON**, real estate broker (**License No. 49779**), shall be **REPRIMANDED** and pay a forfeiture of \$500.00 within (60) days of the effective date of this Order. Within six (6) months of the date of this Order, Respondent shall successfully complete the following real estate broker's course at an educational institution approved by the Department of Regulation and Licensing:

1. Business Management and Marketing module of the Broker's Pre-Licensure Program pursuant to RL 25.02(2)(d).

The above Respondents shall submit proof of this 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. In the event that Respondents fail to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above then and in that event, and without further notice to the Respondents, their real estate license shall be summarily suspended without further hearing and without further Order of the Board, and said suspension shall continue until they has complied with the terms of this Order.

IT IS FURTHER ORDERED that Respondent **BURNET REALTY, INC.**, pay a forfeiture in the amount of \$3,500.00 and pay partial costs of this matter in the amount of \$2,500.00 within thirty (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. In the event Respondent **BURNET REALTY, INC.** fails to pay the forfeiture and 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, the real estate entity license shall be immediately suspended without further hearing and without further Order of the Board, and said suspension shall continue until the full amount of said forfeiture and costs have been paid to the Department of Regulation and Licensing and the failure to pay the costs shall be considered a violation of this Order by the Board.

IT IS FURTHER ORDERED that Respondent BURNET REALTY, INC. shall provide training materials for all of its licensees on the subject of agency disclosure and dual agency within sixty (60) days of the effective date of this order. A copy of the training materials shall be provided to the Department as proof of satisfaction of this requirement.

IT IS FURTHER ORDERED that the Department Monitor is the individual designated by the Board as its agent to coordinate compliance with the terms of this Order, including receiving and coordinating all reports and petitions. The Department Monitor may be reached as follows:

Department Monitor,
Department of Regulation Division of Enforcement,
P.O. Box 8935, Madison, WI 53708-8935,
FAX (608) 266-2264, TEL. (608) 261-7938

IT IS FURTHER ORDERED that in the event that each Respondent fails to fully and timely comply with the requirements set forth in the paragraphs above, the Board may SUSPEND the Respondents real estate licenses, without further notice or hearing, until compliance with the terms of this Order has been shown. In addition, violation of any of the terms of this Order may be construed as conduct imperiling public health, safety and welfare and may result in a SUMMARY SUSPENSION of licenses pursuant to the procedures set forth in 448.02(4) Wis. Stats. and Wis. Admin. Code RL Ch. 6. The Board in its discretion may, in the alternative, impose additional conditions and limitations or other additional discipline for a violation of any of the terms of this Order.

This Order shall become effective upon the date of its signing.

IT IS FURTHER ORDERED, that files 00 REB 274, 01 REB 245 are hereby closed.

Dated this 25th day of September, 2003.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger