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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 : **FINAL DECISION AND ORDER**
PAUL A. CANFIELD : **LS0309257REB**
RESPONDENT. :

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

Paul A. Canfield
3613 Pine Pl.
Eau Claire, WI 54701

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 Wisconsin Real Estate Board ("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. **Paul A. Canfield**, ("Canfield"), date of birth 02/13/70, is licensed in the state of Wisconsin as a real estate salesperson having license # 94-46535. This license was first granted to him on 01/31/97. Canfield's most recent address on file with the Department of Regulation and Licensing is 3613 Pine Pl., Eau Claire, WI

2. At all times relevant to the facts contained herein, Canfield was working as an agent for Kleven Real Estate Inc. ("Kleven") located at 1603 Harding Ave. Eau Claire, WI 54701.

3. In March 2000, David and Rebecca Solberg ("Solbergs") met with Canfield regarding the sale of their property and the purchase of another. The Solbergs' property is located at 222 W. Truman Ave., Eau Claire, WI. Canfield completed a market analysis for the Solbergs and thought their home would be a "quick sell" at \$84,000.00, but that it probably could sell for \$89,900.00. The Solbergs decided that they would like to try and sell their property on their own, but would look at property to purchase with Canfield.

4. The Solbergs became interested in property located on Briarcrest Drive. The Solbergs explained to Canfield that they needed to retain at least \$84,600.00 after the sale of their Truman Ave. home. Canfield explained that if they listed their home for \$89,900.00 with a 5% commission they would be able to walk away with \$84,600.00.

5. On or about March 23, 2000, the Solbergs submitted an offer on the Briarcrest Drive property, which was listed by a Kleven agent, Dave Suchla ("Suchla"). On March 24, 2003, Canfield showed Suchla the Solbergs' property in order to determine if the property would be a quick sell, or for the possibility that Suchla would be interested in buying the property himself.

6. On or about March 24, 2000, the Solbergs' offer on the Briarcrest property was accepted, and on that same day the Solbergs were presented with an Offer To Purchase for their property with Suchla as the buyer. Suchla's Offer had a purchase price of \$89,900.00; no earnest money accompanied the Offer and no earnest money was due after acceptance.

7. During the presentation of Suchla's Offer to the Solbergs, Canfield explained that Suchla wanted to purchase their property if it did not sell by May 21, 2000. In the meantime, he stated that the Solbergs would increase the listing price to \$91,900.00, and the commission would increase from 5% to 6%. Canfield went on to explain that if he found a buyer (other than Suchla) that would offer more than \$89,900.00 for their property, then Suchla wanted to split the proceeds "50/50" with the Solbergs. These terms were not listed in the Offer To Purchase that Suchla submitted, nor was there a Disclosure of Real Estate Agency with Consent to Multiple Representation completed for the Solbergs. A copy of Suchla's Offer To Purchase with acceptance is attached as **Exhibit 1** and is incorporated herein by reference.

8. On or about March 26, 2000, Canfield entered into a WB-1 Residential Listing Contract-Exclusive Right To Sell with the Solbergs for the sale of their home. The list price was \$91,900.00 with a broker's commission of 6%. A copy of the Residential Listing Contract-Exclusive Right To Sell is attached as **Exhibit 2** and is incorporated herein by reference.

9. On or about March 27, 2000, the Solbergs contacted Canfield and expressed concern over the 6% commission they agreed to in the listing contract because they originally had talked about a 5% commission. Canfield completed an Amendment To Listing Contract to read "Commission to Kleven Realtors shall be flexible on offers less than full price in order to reflect the seller's financial position". A copy of the Amendment To Listing Contract is attached as **Exhibit 3** and is incorporated herein by reference.

10. On or about April 1, 2000, Canfield held an open house at the Solbergs' property which resulted in three separate offers to purchase. Before the offers were presented to the Solbergs they expressed concern over the "50/50" split they had talked about prior to the open house. When the Solbergs pointed out to Canfield that the split was not a part of the Listing Contract or Suchla's Offer to Purchase, Canfield agreed to drop it.

11. The Solbergs accepted an Offer To Purchase from Michael Hendricks with a purchase price of \$93,000.00, and the transaction closed on April 27, 2000, with 6% commission going to Kleven. A copy of Hendrick's Offer To Purchase is attached as **Exhibit 4** and is incorporated herein by reference.

12. On or about August 4, 2000, the Solbergs filed an Ethics Complaint against Canfield with the Realtors Association of the Chippewa Valley. On or about October 17, 2000, the Ethics Hearing Panel of the Professional Standards Committee met and recommended Canfield for disciplinary action. The Committee decided that Canfield was in violation of Article 1, 4 and 9 of the Code of Ethics and Standards of Practice as follows:

Article 1

When representing a buyer, seller, landlord, tenant, or other client as an agent, Realtors pledge themselves to protect and promote the interests of their client. This obligation of absolute fidelity to the client's interest is primary, but it does not relieve Realtors of their obligation to treat all parties honestly. When serving a buyer, seller, landlord, tenant or other party in a non-agency capacity, Realtors remain obligated to treat all parties honestly.

Article 4

Realtors shall not acquire an interest in or buy or present offers from themselves, any member of their immediate families, their firms or any member thereof, or any entities in which they have any ownership interest, any real property without making their true position known to the owner or the owner's agent or broker. In selling property they own, or in which they have any interest, Realtors shall reveal their ownership or interest in writing to the purchaser or the purchaser's representative.

Article 9

Realtors, for the protection of all parties, shall assure whenever possible that agreements shall be in writing, and shall be in clear and understandable language expressing the specific terms, conditions, obligations and commitments of the parties. A copy of each agreement shall be furnished to each party upon their signing or initialing.

13. The Ethics Hearing Panel of the Professional Standards Committee recommended either attendance of 6 hours of education or a \$1,000.00 fine. Canfield chose the education and completed the ABR (Accredited Buyers Representative) training. A copy of the Committee's Decision is attached as **Exhibit 5** 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 **Paul A. Canfield** has violated:

a. Wis. Adm. Code secs. RL 24.025(2) and RL 24.07(8)(a), and Sections 452.133(2)(a), 452.133(1)(b), 452.135 (2), 452.14 (3)(i) and 452.14 (3)(L) of the Wisconsin Statutes by failing to have

an agency agreement with the Solbergs prior to drafting the offer to purchase for the Briarcrest property and prior to presenting Suchla's Offer.

b. Wis. Adm. Code sec. RL 24.08, and Sections 452.133(2)(a), 452.133(1)(b), 452.14 (3)(i) and 452.14 (3)(L) of the Wisconsin Statutes by failing to put the guaranteed sale and the 50/50 split agreement in writing.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **Paul A. Canfield**, license # 94-46535, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **Paul A. Canfield**, pay **PARTIAL COSTS** in this matter in the amount of \$1,000.00, within 30 days of the date of this Order. Payment shall be made by **certified check or money order**, payable to the Wisconsin Department of Regulation and Licensing and sent to: **Department Monitor, Division of Enforcement, Department of Regulation and Licensing , PO Box 8935, Madison, WI 53708-8935**.

IT IS FURTHER ORDERED, that in the event Respondent **Paul A. Canfield** fails to pay the \$1,000.00 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 **Paul A. Canfield**, 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 00 REB 186 be, and hereby is, closed.

Dated this 25th day of September, 2003.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger

A member of the Board