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STATE OF WISCONSIN

BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST

JOHN E. LOCKNER
RESPONDENT.

:

:

:

FINAL DECISION AND ORDER

LS0310233REB

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

John E. Lockner
1920 Donegal Dr.
Woodbury, MN 55125

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. **John E. Lockner**, ("Lockner"), date of birth 03/09/65, is licensed in the state of Wisconsin as a real estate salesperson having license # 94-50673. This license was first granted to him on 08/17/99. Lockner's most recent address on file with the Department of Regulation and Licensing is 1920 Donegal Dr., Woodbury, MN

2. At all times relevant to the facts contained herein, Lockner was working as an agent for ReMax Results located at 1920 Donegal Dr., Woodbury, MN 55125.

3. On or about January 1, 2001, Lockner, prepared a Buyer Agency/Tenant Representation Agreement for the signature of potential buyers Ted and Sherry Prokop (Prokops). This agreement states that the Broker has the exclusive right to act as Buyers' agent and the Compensation or Success Fee would be 3.15% of the purchase price. The Prokops signed this agreement on January 1, 2001. A copy of the Buyer Agency/Tenant Representation Agreement is attached as **Exhibit 1** and is incorporated herein by reference.

4. On or about January 10, 2001, Dale Strohbeen (Strohbeen), a real estate broker/employee of Coldwell Banker Valley Real Estate located at 204 S. Knowles Ave., New Richmond, WI, entered into a WB-1 Residential Listing Contract-Exclusive Right To Sell with Mark Gingras for the sale of his home. The list price was \$114,900.00 with a broker's commission of 7%. A copy of the Residential Listing Contract-Exclusive Right To Sell is attached as **Exhibit 2** and is incorporated herein by reference.

5. On or about February 13, 2001, Lockner drafted a WB-11 Residential Offer To Purchase for the Prokops for the Gingras's property. The offered price was \$109,000.00, with earnest money of \$500.00 to accompany the Offer. Lines 317 and 318 reads: Seller agrees to pay Remax Results 3.15% of the sale price at closing. A copy of the WB-11 Residential Offer To Purchase is attached as **Exhibit 3** and is incorporated herein by reference.

6. The Offer was forwarded to Strohbeen, and after his review he noted that on lines 317 and 318 it read: "Seller agrees to pay ReMax Results 3.15% of the sale price at closing." When presenting the Offer, Strohbeen explained to Gingras that if he agreed to the Offer as it was written, it would result in Gingras paying an additional commission of 3.15% instead of what was offered on MLS (2.4%). Gingras did not agree to the additional commission and on February 14, 2001, Strohbeen drafted a Counter-Offer. Lines 6-8 of the Counter-Offer reads: "Seller will not agree to pay ReMax Results. ReMax will receive commission from listing broker as per MLS". A copy of the Counter-Offer To Purchase is attached as **Exhibit 4** and is incorporated herein by reference.

7. On or about February 15, 2001, Strohbeen forwarded Gingras's Counter-Offer to Lockner. On February 17, 2001, Lockner contacted Strohbeen and indicated that he obtained the signatures of the Prokops on the Counter-Offer but was not going to send the Counter-Offer back unless Strohbeen agreed to a higher commission than what was offered on the MLS (2.4%). In order for the transaction to progress to closing, Strohbeen agreed to the higher commission of 2.8% of the sale price. On February 19, 2001, Strohbeen forwarded a written agreement to Lockner and in return asked him to remit the Counter-Offer as soon as possible. A copy of that agreement is attached as **Exhibit 5** and is incorporated herein by reference.

8. After Strohbeen sent the agreement for the higher commission to Lockner, Strohbeen received the signed Counter-Offer from Lockner.

9. This transaction closed on March 28, 2001.

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 **John E. Lockner** has violated:

a. Sections RL 24.03(2)(b) and 24.17(3) of the Wisconsin Administrative Code and sections 452.133(1)(a), 452.133(2)(a), 452.14(3)(i), and 452.14(3)(L) of the Wisconsin Statutes by not forwarding the accepted Counter-Offer in a timely manner in order to negotiate a higher commission for himself.

ORDER

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

IT IS FURTHER ORDERED, that Respondent **John E. Lockner**, license # 94 50673, be, and hereby is, **REPRIMANDED**.

IT IS FURTHER ORDERED, that Respondent **John E. Lockner**, within six months of the date of this Order, successfully complete the following course modules from the 72 hour pre-licensing real estate salesperson's course at an educational institution approved by the Department of Regulation and Licensing:

a. The Ethical Real Estate Practice module-section RL 25.03(3)(m) of the Wisconsin Administration Code.

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 **John E. Lockner** 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 **John E. Lockner**, 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 Respondent **John E. Lockner**, pay **PARTIAL COSTS** in this matter in the amount of a \$500.00, 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 **John E. Lockner** fails to pay the \$500.00 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 **John E. Lockner**, 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 02 REB 004 be, and hereby is, closed as to **John E. Lockner**.

Dated this 23rd day of October, 2003.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger

A member of the Board