

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY :
PROCEEDINGS AGAINST :
 :
 : FINAL DECISION AND ORDER
DAVID J. REED, :
 : LS0412029REB
RESPONDENT. :

Division of Enforcement Case No. 02 REB 029

The parties to this action for the purposes of Wis. Stat. § 227.53 are:

David J. Reed
114 FS Drive
Viroqua, WI 54665

Division of Enforcement
Department of Regulation and Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

Real Estate Board
Department of Regulation & Licensing
1400 East Washington Avenue
P.O. Box 8935
Madison, WI 53708-8935

PROCEDURAL HISTORY

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Real Estate Board. The Board has reviewed the attached Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. David J. Reed (“Respondent”), (DOB 05/07/1947) is duly licensed as a Real Estate Broker in the state of Wisconsin (90-49295). This license was first granted on 03/04/1998. At all times relevant hereto Respondent was doing business as “Oakwood Realty.”
2. Respondent's most recent address on file with the Wisconsin Real Estate Board is 114 FS Drive, Viroqua, WI, 54665.
3. In 2001 Respondent listed a property for sale, located at 54508 State Road 131, LaFarge, WI, 54639.
4. On or about October 8, 2001, the seller accepted an offer to purchase. The offer to purchase called for the receipt of \$1,000 in earnest money. The earnest money was received by the Respondent.

5. On or about October 25, 2001, the buyer informed the seller that they would not close on the property. Subsequently, the buyer requested return of the full amount of the earnest money. The seller actively disputed and opposed the disbursement of the full amount of the earnest money at all times material to this complaint.

6. On or about November 9, 2001, a check was written from the trust account of Oakwood Realty in the amount of \$1,000, and made payable to the buyer. Subsequently, a cancellation agreement and mutual release (“release”) was drafted and sent to the seller calling for the return of the full \$1,000 in earnest money to the buyer.

7. On or about November 12, 2001, the seller altered the release to call for the disbursement of \$480 to himself, and \$520 to the buyer, and mailed the document to the Respondent.

8. Prior to forwarding the release to the buyer, the release was altered by, at the direction of, the Respondent. As altered, the release again called for the release of the full \$1,000 to the buyer, with no money returned to the seller. The release was altered without the seller’s knowledge or consent.

9. The buyer signed the release on December 21, 2001.

10. “Disciplinary proceedings shall be conducted by the board... if it finds that the holder of the license... has: ... (i) Demonstrated incompetency to act as a broker... in a manner which safeguards the interests of the public; (k) been guilty of any other conduct whether of the same or a different character from that specified herein, which constitutes improper, fraudulent or dishonest dealing; (L) Violated any provision of this chapter...” Wis. Stat. § 452.14.

11. “... a broker providing brokerage services to his or her client shall do all of the following: (a) Loyal represent the client’s interests by placing the client’s interests ahead of the interests off any other party...” Wis. Stat. § 452.133 (1).

12. “A broker who disburses trust funds from his or her trust account under the following circumstances shall not be deemed to have violated s. 452.14(3)(i), Stats.: ... (b) as directed in a written earnest money disbursement agreement *signed by all parties...*” Wis. Admin. Code § RL 18.09 (1) (emphasis added).

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in this matter, pursuant to Wis. Stat. § 452.14, and is authorized to enter into the attached Stipulation and Order, pursuant to Wis. Stat. § 227.44(5).

2. The conduct described in paragraph(s) 4-9, above, constitute violations of Wisconsin Statutes § 452.133(1)(i), (k), and (L). Specifically, Respondent, by altering the release agreement to disburse funds as he deemed just violated his duty of loyalty to his client, and engaged in improper dealing. Further, by issuing the check disbursing the funds prior to obtaining an agreement signed by all parties Respondent disbursed funds in a manner that was not competent and sufficient to protect the interests of the public.

MITIGATING AND AGGRAVATING FACTORS

1. Respondent has previously been disciplined on two separate occasions since he was first licensed to practice as a real estate broker in 1998.

2. To date, the Department of Regulation and Licensing has obtained no evidence suggesting that Respondent’s improper conduct was motivated by a desire to obtain an improper profit for himself.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The license of **David J. Reed**, to practice as a Real Estate Broker in the State of Wisconsin is hereby **SUSPENDED** for a period of thirty (30) days, with said suspension to begin thirty (30) days after the date of the signing of

this Order.

IT IS FURTHER ORDERED that:

2. Respondent shall, within one hundred and twenty (120) days of the date of this Order, pay a forfeiture in the amount of \$750.00. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing.

3. Respondent shall, within thirty (30) days from the date of this Order, pay partial costs of this proceeding in the amount of six hundred seventy-five (\$675.00) dollars. Payment shall be made payable to the Wisconsin Department of Regulation and Licensing.

4. Payments shall be mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935
Madison, WI 53708-8935
Telephone (608) 267-3817
Fax (608) 266-2264

5. 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 Respondent's license. 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. In the event Respondent fails to timely submit any payment of the forfeiture as set forth above, or fails to timely submit proof of completion of education as set forth above, the Respondent's license (90-46656) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order, and with the suspension called for in this Order not to begin until the other terms of the Order have been complied with.

6. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

Richard Kollmansberger
A Member of the Board

12-2-2004
Date