

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY :
PROCEEDINGS AGAINST :
 : FINAL DECISION AND ORDER
EMMER REAL ESTATE, :
JAMES M. EMMER, & JENNIFER H. BUSH :
RESPONDENTS. : LS0608243REB

Division of Enforcement Case File # 04 REB 031

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

Emmer Real Estate
4508 Dollar Dr.
West Bend, WI 53095

James M. Emmer
5629 Highway 33 W.
West Bend, WI 53095

Jennifer H. Bush
450 N. Silverbrook Dr. # 207
West Bend, WI 53090

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. **Emmer Real Estate** is a licensed real estate business entity in the state of Wisconsin, license # 91-834683, which was first granted on 03/17/95. Emmer Real Estate's most recent address on file with the Department of Regulation and Licensing is 4508 Dollar Dr., West Bend, WI 53095.

2. **James M. Emmer** is a licensed real estate broker in the State of Wisconsin, license # 90-37034, which was first granted on 02/21/86. Mr. Emmer's most recent address on file with the Department of Regulation and Licensing is 5629 Highway 33 W, West Bend, WI 53095.

3. Mr. Emmer is the president and manager of Emmer Real Estate and is a “business representative” as that term is used in Wis. Stat. § 452.01(3k)

4. **Jennifer H. Bush** is a licensed real estate salesperson in the State of Wisconsin, license # 94-56502, which was first granted on 03/26/03. Ms. Bush’s most recent address on file with the Department of Regulation and Licensing is 450 N. Silverbrook Dr. # 207, West Bend, WI 53090.

5. At all times relevant to the facts set forth below, Ms. Bush was working as a real estate salesperson for Emmer Real Estate. Ms. Bush was also known as Jennifer Buddenhagen.

6. On or about October 31, 2003, Mr. Emmer entered into a Residential Listing Contract-Exclusive Right To Sell agreement with Robert and Amy Ehlers for the sale of their home located at W2796 Dunn Rd., Williamstown, WI. The list price was \$299,900.00.

7. On or about November 21, 2003, Ms. Bush drafted a Residential Offer To Purchase for Jon and Angela Curro to purchase the Dunn Rd. property. The offered price was to be \$275,000.00. One thousand dollars earnest money was to be paid within three days of acceptance, and closing to take place on December 16, 2003. Lines 149-159 of the Offer read: “Financing Contingency: This Offer is contingent upon Buyer being able to obtain a conventional... first mortgage loan commitment as described below, within 20 days of acceptance of this Offer. The financing selected shall be in an amount of no less than \$150,000 for a term of not less than 30 years...The annual rate of interest shall not exceed 6.0%.”

8. Addendum C to the Offer To Purchase Dated 11/21/03 reads: 4. Lender’s Prequalification Letter: Buyer shall provide to seller within 10 days of acceptance of this offer a prequalification letter from buyer’s lender, or at the option of the seller, this offer shall become null and void and all earnest money returned to buyer. This Addendum was signed by the Curros and the Ehlers on 11/21/03.

9. Counter Offer # 3 by the buyer states in part: “Buyer to provide proof of financing by December 10, 2003.” This Counter Offer was accepted by the Ehlers on December 3, 2003.

10. On December 9, 2003, the Curros were pre-qualified by C.L.A. Mortgage Co. of Waukesha for a mortgage loan of \$120,000 at an interest rate of 9.75% over 30 years, and Emmer Real Estate received a letter to that effect. These mortgage terms did not satisfy the financing contingency in the accepted Offer to Purchase.

11. The failure to satisfy the financing contingency was not disclosed to the Ehlers. Instead, the Ehlers were told only that the Curros had been pre-approved for a loan.

12. On or about December 24, 2003, an Amendment To Offer To Purchase was drafted by Ms. Bush changing the closing date from December 16, 2003, to December 29, 2003.

13. On or about December 24, 2003, the Curros asked to be allowed to move some belongings in prior to the December 29th closing. An occupancy agreement was negotiated through Mr. Emmer and Ms. Bush.

14. Without knowing that the financing contingency had not been satisfied, and believing that the closing was going to take place on December 29, 2003, the Ehlers gave permission to the Curros to take occupancy of their property on December 27, 2003.

15. The Ehlers sold some of their furniture including the washer and dryer and moved out of their home on December 26, 2003.

16. The Curros moved into the Ehlers’ property on December 27, 2003.

17. The Curros continued to seek financing at a lower interest rate.

18. On January 26, 2004, an application by the Curros for a \$120,000 loan at 6.75% was turned down by Allied

19. On January 30, 2004 the Curros notified the Ehlers that they were unable to obtain financing as described in the Offer to Purchase. They cancelled the transaction, paid the Ehlers for the period of occupancy, and moved out of the Ehler's property on January 30, 2004.

20. Emmer Real Estate has a policy of destroying files after one year for transactions that don't close.

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 pursuant to Wis. Stat. § 227.44(5).

2. Respondent **James M. Emmer** (license #90-37034) has violated:

a. Wis. Admin. Code §§ RL 17.08(1), and RL 17.08(2), and Wis. Stat. § 452.14(3)(i), by failing to appropriately supervise the real estate activities of Jennifer Bush, a real state salesperson under his supervision;

b. Wis. Admin. Code § RL 24.07(2), and Wis. Stat. § 452.14(3)(i) by failing to disclose a material adverse fact to the Ehlers when the Curros did not satisfy the financing contingency by December 10, 2003, as stated in the Counter Offer;

c. Wis. Admin. Code § RL 15.04 by failing to keep complete and exact copies of records for 3 years;

d. Wis. Stat. §§ 452.133(1)(a), and 452.133(1)(b), by failing to provide brokerage services to all parties to transaction honestly, fairly and in good faith, and by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties.

3. Respondent **Emmer Real Estate** (license # 91-834683) has violated:

a. Wis. Admin. Code § RL 24.07(2), and Wis. Stat. § 452.14(3)(i) by participating, through the conduct of president and managing broker James M. Emmer and the conduct of its employee, Jennifer H. Bush, by failing to disclose a material adverse fact;

b. Wis. Stat. §§ 452.133(1)(a), and 452.133(1)(b), by failing through the acts of its president, managing broker, and employee, to provide brokerage services to all parties in the above described transaction honestly, fairly and in good faith, and by failing through the acts of its president, managing broker, and employee, to diligently exercise reasonable skill and care in providing brokerages services to the parties.

4. Respondent **Emmer Real Estate** (license # 91-834683) is also subject to discipline pursuant to Wis. Stat. § 452.14(4).

5. Respondent **Jennifer H. Bush** (license # 94-56502) has violated:

a. Wis. Admin. Code § RL 24.07(2), Wis. Stat. § 452.14(3)(i) by failing to disclose a material adverse fact to the Ehlers when the Curros did not satisfy the financing contingency by December 10, 2003, as stated in the Counter Offer;

b. Wis. Stat. §§ 452.133(1)(a), and 452.133(1)(b), by failing to provide brokerage services to all parties to transaction honestly, fairly and in good faith, and by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. The real estate broker's license of **James M. Emmer**, license #90-37034, is hereby **REPRIMANDED**.
2. The real estate business entity license of **Emmer Real Estate**, license #91-834683, is hereby **REPRIMANDED**.
3. The real estate salesperson's license of **Jennifer H. Bush**, license #94-56502, is hereby **REPRIMANDED**.
4. Respondent **James M. Emmer** shall within 60 days of the date of this Order, pay a **FORFEITURE** in the amount of \$1,000.00.
5. Respondents shall jointly and severally within 60 days of the date of this Order, pay **COSTS** of this proceeding in the amount of \$2,275.26.

Payment of costs, as well as forfeitures, shall be made payable to the Wisconsin Department of Regulation and Licensing, and mailed to:

Department Monitor
Division of Enforcement
Department of Regulation and Licensing
P.O. Box 8935, Madison, WI 53708-8935
Telephone (608) 261-7904, Fax (608) 266-2264

6. In the event Respondents fail to timely submit any payment as ordered, such violation may be construed as conduct imperiling public health, safety and welfare and the Respondents' licenses SHALL BE SUSPENDED without further notice or hearing, and SHALL REMAIN SUSPENDED until Respondents have complied with the terms of this Order. 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.
7. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

8/24/06
Date