

WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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BY THE STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	FINAL DECISION AND ORDER
MICHAEL J. SCHWANTES,	:	
D/B/A CREATIVE REAL ESTATE	:	
ASSOCIATES INC.	:	LS0602239REB
RESPONDENT.	:	

Division of Enforcement Case File # 03 REB 109

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

Michael J. Schwantes
d/b/a Creative Real Estate Associates Inc.
126 Pine St. Suite 201
Green Bay, WI 54301

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, subj 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. **Michael J. Schwantes**, d/b/a Creative Real Estate Associates Inc., is a licensed real estate broker in the State of Wisconsin, holding license # 90-23020, first granted on 12/05/79. Mr. Schwantes's most recent address on file with the Department of Regulation and Licensing is 126 Pine St. Suite 201, Green Bay, WI 54301.
2. Carl and Ruth Scholz owned and operated a business known as “The Farm” for about 37 years. The Farm is located in Door County north of Sturgeon Bay and is a working farm that is open to the public. The Farm hosts approximately 40,000 visitors a year. The Farm was operated as a Subchapter C Corporation while the Scholzes owned it, and at the time of the sale the Subchapter C Corporation owned various personal property assets, as well as 12 and 40 acre tracts of land.
3. In July 2001, the Scholzes decided to sell The Farm and contacted their friend and ex-employee, David Tanck. Because Mr. Tanck had expressed an interest in buying The Farm in the past, the Scholzes inquired if he was still interested. Mr. Tanck met with the Scholzes and explained that he was very interested in buying The Farm but it was a difficult time since he had just taken a job in Milwaukee and did not know if it would be possible.
4. Believing that Mr. Tanck could not purchase The Farm, the Scholzes contacted a realtor, Mr. Schwantes.

The Scholzes also enlisted the assistance of their son, Jon Scholz, to help with the sale.

5. Jon Scholz explained to Mr. Schwantes that Mr. Tanck was a prospective buyer and he needed to be an exclusion on the listing contract. Mr. Schwantes informed the Scholzes that it he could not list Mr. Tanck as an exclusion in the listing contract.

6. In August 2001, Mr. Schwantes entered into a Business Listing Contract-Exclusive Right To Sell agreement with the Scholzes for the sale of The Farm. The list price was \$650,000.00. Terms of the Contract were from August 18, 2001, until February 18, 2002. Line 2 of the Listing Contract reads: "Business Description: The Farm, 4285 State Road 57, Sturgeon Bay, WI." The description did not include the type of business entity nor the type of business as instructed on line 4 of the Listing Contract. Line 222 reads: "Description of Real Property included in list price: See attached Addendum." No Addendum was attached to the listing contract or was ever produced by Mr. Schwantes.

7. The Business Listing Contract-Exclusive Right To Sell agreement that Mr. Schwantes used was produced using an out of date "ZipForm".

8. The Scholzes did not receive a copy of the completed listing contract from Mr. Schwantes.

9. In October 2001, Mr. Tanck telephoned the Scholzes and stated that the most he could afford to pay was \$500,000.00.

10. On or about October 8, 2001, Jon Scholz informed Mr. Schwantes of the conversation he had with Mr. Tanck.

11. On or about October 10, 2001, Mr. Schwantes notified the Scholzes of the conversation he had with Jon Scholz and offered to help with drafting the offer to purchase for Mr. Tanck.

12. On or about October 18, 2001, Mr. Schwantes notified Jon Scholz that he had spoken with Certified Public Accountant James W. Parsons and he indicated that the best scenario for his parents would be a stock sale rather than an asset sale given that an asset sale would result in a double taxation since the company is a C-Corporation.

13. On or about May, 24, 2002, the Scholzes sold their stock in The Farm to Mr. Tanck for \$500,000.00.

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. The conduct described above in paragraphs 6-9 above, constitutes a violation of:

a. Wis. Admin. Code § RL 15.02(1), by failing to provide the Scholzes a complete copy of the listing agreement;

b. Wis. Admin. Code § RL 16.06(7), and Wis. Stat. §§ 452.14(3)(i), and 452.14(3)(m), by using an out of date Business Listing Contract-Exclusive Right To Sell agreement and thereby failing to use the latest approved version of the listing contract;

c. Wis. Admin. Code § RL 16.06(8) by failing to adequately describe the property on the listing contract thereby failing to use approved forms and prepare addenda in such a manner as to adequately accomplish the contract intent of the person for whom the licensee uses the forms and prepares the addenda;

d. Wis. Admin. Code § RL 24.03(2)(b), and Wis. Stat. § 452.14(3)(b), by incorrectly stating that he could not list Mr. Tanck as an exclusion on the listing contract.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that:

1. **Michael J. Schwantes**, real estate broker's license #90-23020 is hereby **REPRIMANDED**.
2. Respondent shall within 60 days of the date of this Order, pay a **FORFEITURE** in the amount of \$1,000.00.
3. Respondent shall within 60 days of the date of this Order, pay **COSTS** of this proceeding in the amount of \$2,

Payment of costs, as well as forfeitures, shall be made payable to the Wisconsin Department of Regulation and Licensing, and not to:

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

4. In the event Respondent fails to timely submit any payment as ordered, the Respondent's license SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.

5. This Order is effective on the date of its signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

2/23/06
Date