

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 |
| DALE M. SWAN | : | |
| | : | LS06062210REB |
| RESPONDENT. | : | |

Division of Enforcement Case No. 03 REB 214

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

Dale M. Swan
W8917 Swan Bridge Road
Spooner, WI 54801

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 (“Board”). The Board has reviewed the Stipulation agreement annexed to this Final Decision and Order, and considers it acceptable. Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Respondent Dale M. Swan ("Swan"), whose date of birth is November 23, 1960, whose last known address of record with the Department of Regulation and Licensing ("Department") is W8917 Swan Bridge Road, Spooner, WI 54801, holds a license as a Real Estate Broker in the state of Wisconsin (90-44104). Mr. Swan was granted the license on October 18, 1990, and will expire on December 31, 2006.

Count I: Failure to Report Convictions

2. On September 27, 2000, Mr. Swan entered a no contest plea to a charge of disorderly conduct, contrary to Wis. Stat. § 947.01, and was adjudicated guilty of the same. *See* Washburn County Circuit Court case number 2000CM0056.

3. On August 24, 2004, Mr. Swan entered a plea of no contest to a charge of disorderly conduct, contrary to Washburn County Ordinance § 1.01(1), and was adjudicated guilty of the same. *See* Washburn County Circuit Court case number 2004CM0117.

4. Per Wis. Stat. § 452.14(3), "The board may revoke, suspend, or limit any broker's... license or registration, or reprimand the holder of the credential if it finds that the holder of the license or registration has: ... (i) Demonstrated incompetency to act as a broker... in a manner which safeguards the interests of the public;"

5. Per Wis. Admin. Code § RL 24.01(3), "If a licensee violates rules in this chapter, the licensee has demonstrated incompetency to act as a broker... in such a manner as to safeguard the interests of the public under s. 452.14(3)(i), Stats."

6. Per Wis. Admin. Code § RL 24.17(1), "A licensee who has been convicted of a crime, except motor vehicle offenses under chs. 341 to 349, Stats., shall send to the department within 30 days after the date of conviction a copy of the complaint or other information which describes the nature of the crime and the judgment of conviction in order that the department may determine whether the circumstances of the crime are substantially related to the practice of a real estate broker or salesperson..."

Count II: Failure to Secure Written Consent and Demonstrated Incompetency

7. In July of 2002 Mr. Swan was contacted by his parents (hereafter, "buyers"), who were interested in purchasing a property that they had seen advertised as, "For Sale by Owner." Mr. Swan contacted the sellers on behalf of his parents. Mr. Swan discussed a sales price with the sellers, and the sellers verbally agreed that he would accept an offer of \$90,000. On July 30, 2002, Mr. Swan assisted buyers in drafting an offer to purchase for \$90,000. Mr. Swan did not, however, enter into an agency with his parents, nor did he provide them with a written agency disclosure form.

8. The offer to purchase as drafted by Mr. Swan and buyers called for acceptance by August 3, 2002, with earnest money of \$3,000 to be paid to sellers within three days of acceptance of the offer. Sellers modified these terms to call for acceptance by August 16, 2002; sellers accepted the offer on August 12, 2002. Per the modified offer to purchase, closing was to occur on August 23, 2002.

9. The earnest money was not paid to the seller by August 16, 2002, per the offer to purchase. Instead, sellers were notified by Washburn County Abstract Company that they had received \$3,000 from buyers on August 19, 2002, which was presented as earnest money. Sellers had not agreed to the delivery of earnest money to anyone other than the sellers. Washburn County Abstract Company further informed sellers that closing had been scheduled for September 23, 2002, with buyers stating that this was the earliest date on which they would have access to the funds needed to purchase the property. Sellers had not agreed to change the date of closing.

10. On August 20, 2002, Sellers' attorney contacted buyers and Mr. Swan by letter sent via facsimile and first class mail. The letter stated that sellers intended to sell the property to another interested party, citing the failure to timely pay earnest money to sellers as called for by the offer to purchase.

11. On August 21, 2002, Mr. Swan left a voice-mail message for sellers' attorney. In the voice-mail message Mr. Swan asserted that the offer to purchase was enforceable, even though the earnest money had not been paid, as required by the offer to purchase. Mr. Swan further asserted that a Lis Pendens [\[1\]](#) would be filed against the property if the property was not sold to the buyers.

12. Per Wis. Admin. Code § RL 24.03(2)(c), "Licensees shall be knowledgeable regarding laws, public policies and current market conditions on real estate matters and assist, guide and advise the buying or selling public based upon these factors."

13. Per Wis. Admin. Code § RL 24.05(2), “A licensee acting as an agent in a real estate... transaction may not act in the transaction... on behalf of the licensee’s immediate family... without the prior written consent of all parties to the transaction. For the purpose of this subsection, a licensee may obtain written consent in the offer to purchase...”

14. Per Wis. Stat. § 452.135, “(1) No broker may provide brokerage services without an agency agreement... (and) (2) No broker may provide brokerage services to a party to a transaction unless the broker has provided to the party a written agency disclosure form...”

15. Per Wis. Stat. § 452.14(3), “The board may revoke, suspend, or limit any broker’s... license or registration, or reprimand the holder of the credential if it finds that the holder of the license or registration has: ... (L) Violated any provision of this Chapter;”

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction to act in these matters pursuant to Wis. Stat. § 452.14.

2. The Wisconsin Real Estate Board has authority to enter into this stipulated resolution of this matter pursuant to Wis. Stat. § 227.44(5).

3. By failing to notify the Department that he had been convicted of violations of law by sending copies of the judgment of conviction or other information within 30 days, so that the Department could determine whether the convictions were or were not substantially related to the practice of real estate, as described above in paragraphs 2-3 of the Findings of Fact, **Dale M. Swan** has committed two violations of Wis. Admin. Code § RL 24.17(1), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

4. By acting as an agent in a real estate on behalf of a member of his immediately family, without securing the written consent of all parties to the transaction, as described in paragraphs 10-11 and 14 of the Findings of Fact, **Dale M. Swan** has committed a violation of Wis. Admin. Code § RL 24.05(2), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

5. By threatening to file a Lis Pendens against real estate, when he knew or should have known that there was no valid legal basis for doing so, as described in paragraph 14 of the Findings of Fact, **Dale M. Swan** has committed a violation of Wis. Admin. Code § RL 24.03(2)(c), thereby subjecting himself to discipline per Wis. Admin. Code § RL 24.01(3) and Wis. Stat. § 452.14(3)(i).

6. By providing brokerage services without an agency agreement, and by providing brokerage services to a party to a transaction without providing the party with a written agency agreement, as described in paragraphs 10-11 of the Findings of Fact, **Dale M. Swan** has committed two or more violations of Wis. Stat. § 452.135(1) and (2), thereby subjecting himself to discipline per Wis. Stat. § 452.14(3)(L).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The license of DALE M. SWAN to practice as a real estate broker in the State of Wisconsin and shall be, and hereby is, SUSPENDED for a period of twenty-five (25) days, beginning on August 1, 2006.

IT IS FURTHER ORDERED THAT:

2. Respondent shall, by November 1, 2006, pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$990.00.
3. Respondent shall, by December 1, 2006, submit proof of completion of no less than sixteen (16) hours of continuing education, the subjects of which shall be ethics and real estate law.
4. All payments required by this Order shall be mailed or delivered to:

Department Monitor
Department of Regulation and Licensing
Division of Enforcement
1400 East Washington Ave.
P.O. Box 8935
Madison, WI 53708-8935
Fax: (608) 266-2264
Telephone: (608) 261-7904

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 as set forth above (if any), or fails to timely submit proof of completion of education as set forth above (if any), the Respondent's license (90-44104) SHALL BE SUSPENDED, without further notice or hearing, until Respondent has complied with the terms of this Order.
6. This Order is effective on the date of signing.

WISCONSIN REAL ESTATE BOARD

By: Peter Sveum
A Member of the Board

6/22/2006
Date

| | | |
|-----------------------------------|---|-------------|
| IN THE MATTER OF THE DISCIPLINARY | : | |
| PROCEEDINGS AGAINST | : | |
| | : | STIPULATION |
| DALE M. SWAN | : | |
| | : | LS# _____ |
| RESPONDENT. | : | |

Division of Enforcement Case No. 03 REB 214

It is hereby stipulated between Dale M. Swan; and attorney Mark A. Herman, for the Department of Regulation and Licensing, Division of Enforcement, as follows:

1. This Stipulation is entered into as a result of a pending investigation of Respondent’s licensure by the Division of Enforcement (Case No. 03 REB 214). Respondent consents to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondent understands that by signing this Stipulation he voluntarily and knowingly waives his rights, including: the right to a hearing on the allegations against him, at which time the state has the burden of proving those allegations by a preponderance of the evidence; the right to confront and cross-examine the witnesses against him; the right to call witnesses on his behalf and to compel their attendance by subpoena; the right to testify himself; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to him under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondent has been provided with the opportunity to obtain the advice of legal counsel prior to signing this stipulation.
4. Respondent agrees to the adoption of the attached Final Decision and Order by the Real Estate Board. The parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties. Respondent waives all rights to any appeal of the Board's order, if adopted in the form as attached.
5. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation, and the matter shall be returned to the Division of Enforcement for further proceedings. In the event that this Stipulation is not accepted by the Board, the parties agree not to contend that the Board has been prejudiced or biased in any manner by consideration of this attempted resolution.
6. The parties to this Stipulation agree that the attorney or other agent for the Division of Enforcement and any member of the Real Estate Board ever assigned as an advisor in this investigation may appear before the Board in open or closed session, without the presence of the Respondent or his attorney, for purposes of speaking in support of this agreement and answering questions that any member of the Board may have in connection with the Board’s deliberations on the Stipulation. Additionally, any such Board advisor may vote on whether the Board should accept this Stipulation and issue the attached Final Decision and Order.
7. Respondent is informed that should the Board adopt this Stipulation, the Board’s final decision and order is a public record and will be published in accordance with standard Department procedure.
8. The Division of Enforcement joins Respondents in recommending the Board adopt this Stipulation and issue the attached Final Decision and Order.

Dale M. Swan, Respondent
W8917 Swan Bridge Road
Spooner, WI 54801

Date

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

Date

[03 REB 214: \$990.00 Costs, Suspension and Education.]

[\[1\]](#) Lis Pendens is Latin for “pending lawsuit.” The filing of a Lis Pendens would have the effect of telling any potential buyer of the property that a lawsuit was pending which might affect the rights of the current owner to convey the property.