

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	:	
	:	
BRIAN A. DELANEY, JOHN T.	:	FINAL DECISION
SIEWERT, JR., JOHN T. SIEWERT,	:	AND ORDER
SR. AND JR-SR INC. d/b/a	:	
COLDWELL BANKER SIEWERT	:	
REALTORS,	:	LS0606228REB
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 04 REB 156

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

Brian A. Delaney
730 9th Street South
Wisconsin Rapids, WI 54494

John T. Siewert, Jr.
325 8th Street South
Wisconsin Rapids, WI 54494

John T. Siewert, Sr.
325 8th Street South
Wisconsin Rapids, WI 54494

JR-SR, Inc.
325 8th Street South
Wisconsin Rapids, WI 54494

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 Brian A. Delaney ("Delaney"), whose date of birth is December 24, 1964, and whose address of record with the Department of Regulation and Licensing ("Department") is 730 9th Street South, Wisconsin Rapids, WI, 54494, holds a license as a Real Estate Salesperson in the state of Wisconsin (94-44354). Respondent was first granted the license on January 2, 1996, pursuant to Wis. Stat. Ch. 452. Delaney's license is currently active, and is scheduled to expire on December 31, 2006.

2. Respondent John T. Siewert Jr. ("Siewert Jr."), whose date of birth is December 4, 1952, and whose address of record with the Department is 325 8th Street South, Wisconsin Rapids, WI, 54494, holds a license as a Real Estate Broker in the state of Wisconsin (90-29934). Respondent was first granted the license on April 27, 1979, pursuant to Wis. Stat. Ch. 452, and the license expires on December 31, 2006.

3. Respondent John T. Siewert Sr. ("Siewert Sr."), whose date of birth is not on record with the Department, and whose address of record with the Department is 325 8th Street South, Wisconsin Rapids, WI, 54494, holds a license as a Real Estate Broker in the state of Wisconsin (90-3307). Respondent was first granted the license on May 29, 1956, pursuant to Wis. Stat. Ch. 452, and the license expires on December 31, 2006.

4. Respondent JR-SR, Inc., who does business as Coldwell Banker/Siewert REALTORS, and whose address of record with the Department is 325 8th Street South, Wisconsin Rapids, WI, 54494, holds a license as a Real Estate Business Entity in the state of Wisconsin (91-834107). Respondent was first granted the license on May 7, 1991, pursuant to Wis. Stat. Ch. 452, and the license expires on December 31, 2006.

5. Delaney's license as a real estate salesperson expired on December 31, 1998. Delaney's renewal notice was inadvertently forwarded to another address. Delaney continued to practice real estate under the supervision of JR-SR, Inc., and its owners, Siewert Jr. and Siewert Sr., from January 1, 1999, to December 31, 2000.

6. From January 1, 1999 to December 31, 2000, JR-SR, Inc., Siewert Jr. and Siewert Sr. failed to note that Delaney's license had expired.

7. From January 1, 1999, to December 31, 2000, JR-SR, Inc. continued to share commissions with Delaney.

8. In May of 2002 JR-SR Inc. noted that Delaney's license had expired and informed Delaney of the same.

9. In May of 2002 Delaney contacted the Department regarding renewal of his license. On June 6, 2002, the Department waived the late fee for renewal of Delaney's license due to the fact that the notice was inadvertently forwarded to another address. On June 18, 2002, Delaney's renewal check was returned for insufficient funds. Delaney's license was not restored to active status until August 23, 2002.

10. From June 1, 2002, to August 23, 2002, Delaney continued to practice real estate under the supervision of JR-SR, Inc., and its owners, Siewert Jr. and Siewert Sr.

11. From June 1, 2002, to August 23, 2002, JR-SR, Inc. continued to share commissions with Delaney.

12. Per Wis. Stat. § 452.14(3)(L), a licensee is subject to discipline if he or she has, "Violated any provision of this chapter;"

13. Per Wis. Stat. § 452.03, “No person may engage in or follow the business occupation of, or hold himself or herself out as, or act... as a broker or salesperson without a license.”

14. Per Wis. Stat. § 452.19, “No licensed broker may pay a fee or a commission or any part thereof for performing any act specified in this chapter... to any person who is not licensed or registered under this chapter...”

15. Per Wis. Admin. Code § RL 24.17(3), Licensees shall not violate any provisions... of... chs. RL 11 to 26.

16. Per Wis. Admin. Code § RL 17.07, “A broker-employer shall... at the beginning of each biennial licensure period, determine that each licensee employed by the broker is properly licensed.”

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 inadvertently practicing as a real estate salesperson without a valid license from January 1, 1999, to May 2002, and by knowingly practicing as a real estate salesperson without a license from June 1, 2002 to August 23, 2002, as described in paragraphs 5 and 9-10 of the findings of fact, **Delaney** has violated Wis. Stat. § 452.03, and, consequently, subjected himself to discipline per Wis. Stat. § 452.14(3)(L).
4. By failing to ensure that Delaney was held a valid license to practice real estate during the 1999-2000 biennium, and by failing to note that Delaney was not licensed until May of 2002, **JR-SR, Inc., Siewert Jr. and Siewert Sr.** have committed one or more violations of Wis. Admin. Code § RL 17.07, thereby subjecting themselves to discipline per Wis. Stat. § 452.14(3)(i).
5. By inadvertently sharing commissions with an unlicensed person from January 1, 1999, to May 2002, and by inadvertently sharing commissions with an unlicensed person from June 1, 2002, to August 23, 2002, **JR-SR, Inc., Siewert Jr. and Siewert Sr.** have committed four or more violations of Wis. Stat. § 452.19, thereby subjecting themselves to discipline per Wis. Stat. § 452.14(3)(L).

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The license of **Brian A. Delaney** to practice as a real estate salesperson in the State of Wisconsin (#94-44354) and shall be, and hereby is, SUSPENDED for a period of twenty-one (21) days, beginning on August 1, 2006.
2. The licenses of **JR-SR, Inc.** (#91-834107), **John T. Siewert, Sr.** (#90-3307) and **John T. Siewert Jr.** (#90-29934), shall be, and hereby are, REPRIMANDED.

IT IS FURTHER ORDERED THAT:

3. Respondent **JR-SR, Inc.**, shall, by September 1, 2006, pay the costs of the Division of Enforcement in investigating this matter, in the amount of \$700.00. Respondents shall be held jointly and severally liable for the payment of costs.
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 Respondents' licenses. 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 Respondents' licenses (90-3307, 90-29934, 91-834107 and 94-44354) 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

By: Peter Sveum
A Member of the Board

6/22/06
Date

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	
	:	STIPULATION
BRIAN A. DELANEY, JOHN T.	:	
SIEWERT, JR., JOHN T. SIEWERT,	:	
SR. AND JR-SR INC. d/b/a	:	
COLDWELL BANDER SIEWERT	:	
REALTORS,	:	LS# _____
	:	
RESPONDENTS.	:	

Division of Enforcement Case No. 04 REB 156

It is hereby stipulated between Brian A. Delaney, Respondent; John T. Siewert, Jr., Respondent; John T. Siewert, Sr., Respondent; Jr-Sr, Inc., Respondent; attorney David A. Sayas, attorney for Respondents, 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 Respondents' licensures by the Division of Enforcement (Case No. 04 REB 156). Respondents consent to the resolution of this investigation by stipulation and without the issuance of a formal complaint.
2. Respondents understand that by signing this Stipulation they voluntarily and knowingly waive their rights, including: the right to a hearing on the allegations against them, 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 them; the right to call witnesses on their behalf and to compel their attendance by subpoena; the right to testify themselves; 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 them under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.
3. Respondents have been provided with the opportunity to obtain the advice of legal counsel prior to signing this stipulation.
4. Respondents agree 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 Respondents or their 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. Respondents are 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.

Brian A. Delaney, Respondent 730 9 th Street South Wisconsin Rapids, WI 54494	Date
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John T. Siewert, Sr., Respondent On his own behalf and on behalf of Respondent Jr-Sr, Inc. 325 8 th Street South Wisconsin Rapids, WI 54494	Date
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John T. Siewert, Jr., Respondent On his own behalf and on behalf of Respondent JR-SR, Inc. 325 8 th Street South Wisconsin Rapids, WI 54494	Date
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David A. Sayas, Attorney for Respondents Sayas, Schmuki & Plum, S.C. 11430 West Bluemound Road, Suite 200 Wauwautosa, WI 53226	Date
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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
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[04 REB 156: Suspension, Costs, Fine.]